TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~439.~~ 162

REED PECK, ADMINISTRATOR OF GEORGE W. PECK, DECEASED, PLAINTIFF IN ERROR,

vs.

TRUMAN D. COLLINS.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

FILED JUNE 20, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 433.

REED PECK, ADMINISTRATOR OF GEORGE W. PECK, DECEASED, PLAINTIFF IN ERROR,

vs.

TRUMAN D. COLLINS.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

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1 CASE ON APPEAL.

Supreme court, general term, third department.

REED PECK, AS ADMINISTRATOR OF THE ESTATE of George W. Peck, deceased, appellant,
ag'st
TRUMAN D. COLLINS, RESPONDENT.

Judgment for pl'ff.
A. D. Wales, attorney for appellant.
M. M. Waters, attorney for respondent.

Filed Dec. 5, 1876.

2 Court of appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals held at the capitol, in the city of Albany, on the 18th day of September, in the year of our Lord one thousand eight hundred and seventy-seven, before the judges of said court.

Witness the Hon. Sanford E. Church, chief judge, presiding.

E. O. PERRIN, *Clerk.*

Remittitur.—Sept. 18th, 1877.

3 REED PECK, ADMINISTRATOR, &C., APPELLANT,
ag'st
TRUMAN D. COLLINS, RESPONDENT.

Be it remembered that on the fifth day of December, in the year of our Lord one thousand eight hundred and seventy-six, Reed Peck, administrator, &c., the appellant in this action, came here into the court of appeals, by A. D. Wales, his attorney, and filed in the said court a notice of appeal and return thereto from the judgment & order of the general term of the supreme court.

And Truman D Collins, the respondent in said action afterwards appeared in said court of appeals, by M. M. Waters, his attorney.

4 Which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon the said court of appeals, having heard this cause argued by Mr. A. D. Wales, of counsel for the appellant, and Mr. M. M. Waters, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment & order of the supreme court, appealed from in this action, be in all things affirmed. And it was further ordered and adjudged that the respondent recover against the appellant costs of appeal to this court.

And it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the said supreme court, there to be proceeded upon according to law.

5 Therefore, it is considered that the said judgment & order be in all things affirmed, with costs as aforesaid, and stand in full force, strength, and effect.

And hereupon, as well the notice of appeal and return thereto afore-

said as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

F. S. PERRIN,
Dep. Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, Sept. 18th, 1877.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

[SEAL.] F. S. PERRIN,
Dep. Clerk.

6 *Statement of case.*

Supreme court, general term.

REED PECK, AS ADMINISTRATOR OF THE ESTATE of George W. Peck, deceased, appellant,
ag'st
TRUMAN D. COLLINS, RESPONDENT.

Action begun by George W. Peck as plaintiff, against Truman D. Collins as defendant, by service of summons by publication—date of last publication of summons, January 18, 1872. Place of trial being Chenango County.

Complaint filed November 14, 1871.

Judgment entered on failure to answer in the office of the clerk of the county of Chenango, May 28th, 1872.

Order vacating said judgment, and permitting defendant to answer within twenty days, granted July 9th, 1872.

Answer served July 31st, 1872.

Reply served August 19th, 1872.

7 Place of trial changed on stipulation, by order of the court, to Broome County, May 19th, 1873.

Reed Peck, as administrator of the estate of George W. Peck, deceased, substituted in the place of said George W. Peck, deceased, by order of the court, granted November 9th, 1875.

New trial denied, Tompkins County special term, Dec. 7th, 1875. Entered in Broome County clerk's office, Feb. 3rd, 1876.

Supreme court, general term.

REED PECK, AS ADMINISTRATOR OF THE ESTATE of George W. Peck, deceased, appellant,
ag'st
TRUMAN D. COLLINS, RESPONDENT.

BROOME COUNTY, *ss:*

A. D. Wales, being duly sworn, says that he is the attorney for the above-named appellant on this appeal to the supreme court at general

term. That no opinion was written by the Hon. David L. Follett, the justice of the supreme court at special term, who denied the motion for a new trial herein made at special term, as deponent has been informed by the said justice, and verily believes.

A. D. WALES.

Sworn to before me Feb. 28th, 1876.

G. F. LYO ,
Notary Public.

Notice of appeal from said judgment and order denying new trial, served February 29th, 1876.

The following annexed is the judgment roll containing case and exceptions, notice of appeal, &c.

8 *Judgment roll.*

Supreme court, county of Chenango.

GEORGE W. PECK
ag'st
TRUMAN COLLINS.

Case and exceptions. Summons for money.

To the above-named defendant:

You are hereby required to answer the complaint of George W. Peck, a copy of which is filed in the Chenango County clerk's office at Norwich, N. Y., and to serve a copy of your answer on the subscriber, at his office, in Afton, Chenango County, N. Y., within twenty days after the service hereof upon you, exclusive of the day of service, and if you fail to answer said complaint, the plaintiff will take judgment against you for $1,500.00 dollars and cents, with interest from Dec. 17, 1869, and $2,000.00, with interest from July 6, 1866, besides costs and disbursements in this action.

Dated Afton, Nov. 13, 1871.

J. B. KIRKHUFF,
Plaintiff's Attorney.

9 *Complaint.*

Supreme court, Chenango County.

GEORGE W. PECK
ag'st
TRUMAN D. COLLINS.

The plaintiff above named complains of the defendant herein and shows to this honorable court the following cause or causes of action:

I. That on the 11th day of June, 1866, he made and entered into an agreement with the defendant of which the following is a copy.

Article' of agreement made this 11th day of June, 1866, between Truman D. Collins, of Cortland, N. Y., of the first part, and George W. Peck, of Cortland, N. Y., of the second part, are as follows:

Whereas the said Peck did by a contract bearing date April 28, 1866, bind himself in consideration of the sum of $1,500, which sum was

then paid to said Peck, to deed to said Collins an undivided three thirty-second part of a patent right, entitled a new mode of sinking wells; and whereas said contract was given after the letters patent has been surrendered up for a reissue, and in ignorance of the fact that under certain circumstances the letters would not be returned to the owner of said patent; and

Whereas said Peck desires a release from his obligation under the said contract, in case he shall not be enabled to fulfill such obligation:

Now this agreement witnesseth that the said Collins, in consideration of the restoration of the said $1,500, agrees to release the said Peck from all obligation he has incurred under said contract, provided said Peck shall not be enabled at any time to fulfill the terms and conditions of said contract.

And the said Collins further agrees to pay all that portion of
10 the expense of the application for a reissue which have been incurred, or which may be hereafter incurred, which it shall be incumbent on the said Peck to pay as an owner of said patent, as stated in said patent, viz: a three thirty-second part. The said Collins further agrees to pay to the said Peck the sum of $1,500 when the said Peck shall notify him of his readiness to fulfill the said contract by deeding to said Collins his interest in said patent or any reissue which may be granted under said application.

T. D. COLLINS.
G. W. PECK.

[3.02 I. R. S. cancelled.]

And this plaintiff says that he has duly performed all the conditions of said contract on his part, and that on or about the 17th of Dec., 1869, he gave the defendant herein notice of his readiness to fulfill said contract and convey said patent.

II. That on or about the 6th of July, 1866, one Preston R. Peck and this plaintiff, George W. Peck, took of this defendant an inst'ument in writing, of which the following is a copy, viz:

Received of Preston R. Peck and Geo. W. Peck two thousand ($2,000) dollars in 7-30 bonds; said bonds to be returned to Preston R. Peck and G. W. Peck as soon as Byron Mudge succeeds in getting a reissue of a patent for putting down wells, now in the Patent Office, or provided the old patent is returned, but if said patent is not reissued or returned, then T. D. Collins is to keep the bonds and surrender his article he has for the purchase of an interest in said patent.

T. D. COLLINS.
GEO. W. PECK.

[.02 I. R. S. Can.; c. 5 I. R. S. cancelled.]

11 And this plaintiff says the old patent was returned as provided in said instrument, and on or about the month of November, 1869.

And plaintiff says that whatever was done about said patent heretofore mentioned, while it was in the Patent Office, was done under the direction of the defendant, or his agents and attorneys.

And plaintiff says that each and every of the conditions in said instrument have been performed or done to entitle this plaintiff to the $2,000, and return of said bonds mentioned in said instrument, and plaintiff owns the interest of said Preston R. Peck in said instrument.

III. And plaintiff says that no part of the $2,000 has been paid him or bonds returned by defendant to him, though he has requested the defendant to do so, and that no part of the $1,500 has been paid, though he has requested the defendant to do so. Wherefore by reason of the foregoing premises the plaintiff asks for a judgment against the defendant of $1,500, and interest from the 17th of Dec., 1869, and for $2,000 and interest on the same from the 6th of July, 1866, besides costs of this suit.

J. B. KIRKHUFF,
Pl'ff's Att'y, Afton, N. Y.

CHENANGO COUNTY, *ss:*

George W. Peck, of Afton, in said county, being duly sworn, says he is plaintiff in the above entitled action, that he has heard read the foregoing complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein set forth on information and belief, and as the those matters he believes it to be true.

G. W. PECK.

Sworn to before me Oct. 30, 1871.

THOMAS COVERT,
Justice of the Peace.

12 *Answer.*

Supreme court.

GEORGE W. PECK } *ag'st* TRUMAN COLLINS. }

The defendant in answer to the complaint denies each and every al - gation therein contained, except as hereinafter admitted.

II. And in further answering the defendant avers upon information and belief that the plaintiff, George W. Peck, has never performed the contract referred to in the complaint dated April 28th, 1866, and is utterly unable to perform the same, and is not the owner of any interest in the patent therein referred to, but the pretended interest to which said contract relates, to wit, the three-thirty-second part thereof, is the property of other parties, and the said plaintiff never obtained any right, title, or interest into or under the patent referred to in the complaint, but all his patent interest was an infringement upon the rights of one N. W. Green and one Suggett, and which was and is well known to plaintiff, or both, hence the said contract upon which this action is founded is absolutely void for lack of consideration and for fraud.

III. And in further answering the defendant answers on information and belief and avers that the $2,000 referred to in the complaint (the second count thereof) was the thousand dollars advanced by the defendant to the parties Preston R. and Geo. Peck, as purchase money of a pretended interest in the patent hereinbefore referred to, and said money was returned to the defendant upon defendant's ascertaining the facts set forth or referred to in the first count of the complaint, and without defendant's knowledge of plaintiff's grant hereinbefore referred to, and the defendant further avers that said patent was absolutely fraudulent and void and was adjudged to be an infringement upon the rights and patents of said Green & Suggett, one or both, and was

13 invalid, worthless, and not sufficient as a consideration to the contract set out in the second count of the complaint, and all of which the plaintiff well knew and the defendant did not know, by reason whereof the said contract, dated July 6th, 1866, is absolutely void, wherefore the defendant demands that the complaint in this action be dismissed with costs.

IV. And in further answering the defendant avers, on information and belief, that one J. V. Collins, for and in behalf of the parties to this, undertook and agreed with the plaintiff by his agent, one Reed Peck, to defend certain actions brought by N. W. Green against Byron Mudge in relation to the patent hereinbefore referred to, and to prosecute in behalf of said Mudge and the plaintiff and those interested with him an undertaking to obtain reissue of the patent in behalf of said Mudge and those interested with him therein, and to do certain other matters in relation thereto, and it was expressly agreed that all the expenses incurred by said J. V. Collins in and about said undertaking and business should be deducted out of the three thousand five hundred dollars mentioned in the pleadings hereinbefore, and in pursuance thereof said J. V. Collins did expend more than the whole $3,500 in the undertaking, according to said contract, and by reason thereof said money specified in the complaint has all been paid out and the claim sued upon extinguished before the commencement of this action.

M. M. WATERS,
Att'y for Def't.

CORTLAND COUNTY, *ss:*

Jabez Collins, being duly sworn, says that he is the agent of the defendant in this action in relation to the subject-matter of this action and for the defence thereof, and that the defendant is absent from the county of Cortland, where deponent resides and where defendant's attorney resides, and said defendant is as deponent believes in the State of Pennsylvania, and deponent is acquainted with the facts stated in the answer, except as to the matters therein stated on information and belief,

14 and the grounds of his belief are, that about the dates referred to in the answer he learned most of the facts stated in the answer from the parties to the action or their agents, and defendant further knows that a long litigation as to the validity of said patent has been had between the Mudge referred to in the complaint and said Suggett & Green, and the said Mudge was defeated in said action and his rights declared to be subordinate to the request of said Green or Suggett, one or both.

JABEZ COLLINS.

Subscribed and sworn before me this 24th day of June, 1872.
P. M. KELLOGG,
Notary Public.

Supreme court.

GEORGE W. PECK
ag'st
TRUMAN D. COLLINS.

The plaintiff in reply to the defendant's answer herein denies the same and each and every allegation therein contained inconsistent with the complaint herein.

II. And, further replying, the plaintiff says that Reed Peck never was

employed to defend certain matters or prosecute, as set up in the answer, in any matters in relation to said patent.

And that he never employed said J. V. Collins or authorized Reed Peck to employ said Collins to so defend or prosecute any suits whatever in relation to this patent, nor was said Collins so employed. That it never was agreed that any expense the said J. V. Collins incurred in prosecuting or defending any suits should be deducted out of the said $3,500, and if said Collins spent that sum, plaintiff alleges he did it on some other account than the account of this plaintiff, or Preston R. Peck, one or both, or which is the subject of this action, and plaintiff expressly denies any allegation of fraud in the procuring of the contracts or which this action is brought, or lack of consideration therefor, or payment of any part of the claims, and demand' judgment as set out in his complaint.

J. B. KIRKHUFF,
Pl'ff's Att'y.

CHENANGO COUNTY, *ss:*

George W. Peck, of Afton, in said county, being duly sworn, says he has heard read the foregoing reply, is the plaintiff herein, and knows the contents thereof, and that the same is true of his own knowledge, except the matters therein stated on information and belief, and as to those matters he believes it to be true.

GEO. WALTER PECK.

Sworn to before me Aug. 17th, 1872.

THOMAS COVERT,
Justice of the Peace.

Supreme court, Broome circuit, November, 1874.

GEORGE W. PECK *ag'st* TRUMAN D. COLLINS.

No. 9. Tried Nov. 25th, Hon. D. Boardman, justice.
For the pl'ff, J. B. Kirkhuff, O. W. Chapman.
For the def't, M. M. Waters.

Issue being joined, this action was brought on to trial, at a circuit court held in and for the county of Broome, at the court house, in the city of Binghamton, on the 25th day of November, 1874, before Hon. Douglass Boardman, one of the justices of this court, and jury, and the following is the evidence given and the proceedings which took place at said trial, to wit:

Preston R. Peck, being called and sworn for the plaintiff and examined by Mr. Kirkhuff, testified as follows: (The execution of the receipt and contract in question are admitted.) Pl'ff's counsel offered and read in evidence the receipt and assignment endorsed thereon, the execution and delivery of which was admitted, and the contract referred to, as follows:

Received July 6th, 1866, of Preston R. Peck & G. W. Peck two thousand (2,000) dollars in 7.30 bonds, said bonds to be returned to Preston R. Peck & G. W. Peck as soon as Byron Mudge succeeds in getting a reissue of a patent for putting down wells, now in the Patent Office, or providing the old patent is returned, but if said patent is not reissued or returned, then T. D. Collins is to keep the bonds and surrender his article he has for the purchas' of an interest in said patent.

T. D. COLLINS.

[Two-cent bank-check, July 6th, 1866. Five cent-stamp, July 6th.]

(Endorsed on the above was the following assignment, the execution and delivery of which was admitted:)

AFTON, *Aug.* 30, 1871.

For value received I hereby sell, assign and set over to George Walter Peck my right, title, and interest in and to the written instrument and the $2,000 therein mentioned, hereby giving him full power to collect, enforce, and receive the amount due thereon the same as I might do in his own name.

PRESTON R. PECK.

Articles of agreement made this 11th day of June, 1866, between Truman D. Collins, of Cortland, N. Y., of the first part, and George W. Peck, of Cortland, N. Y., of the second part, are as follows:

17 Whereas the said Peck did by a contract bearing date April 28th, 1866, bind himself in consideration of the sum of fifteen hundred dollars, which sum was then paid to said Peck, to deed to said Collins an undivided three thirty-second part of a patent right, entitled a new mode of sinking wells, and whereas said contract was given after the letters patent had been surrendered up for a re-issue and in ignorance of the fact that under certain circumstances the letters would not be returned to the owners of said patent; and whereas the said Peck desires a release from his obligations under the said contract in case he shall not be enabled to fulfill such obligations:

Now this agreement witnesseth that the said Collins, in consideration of the restoration of the said fifteen hundred dollars, agrees to release the said Peck from all obligations he has incurred under said contract, provided said Peck shall not be enabled at any time to fulfill the terms and conditions of said contract. And the said Collins further agrees to pay all that portion of the expenses of the application for a reissue which have been incurred, or which may be hereafter incurred, which it shall be incumbent on said Peck to pay as an owner of said patent as stated in said patent, viz: a three thirty-second part. The said Collins further agrees to pay to the said Peck the sum of fifteen hundred dollars when the said Peck shall notify him of his readiness to fulfill the said contract by deeding to said Collins his interest in said patent or any reissue which may be granted under said application.

T. D. COLLINS.
G. W. PECK.

[2-cent bank-check, June; 2-cent bank-check; 2-cent bank-check.]

(Endorsed:) Exhibit A.

The papers referred to were here marked Exhibits A and B.

No part of these sums mentioned here have ever been paid?
No, sir.

18 BYRON MUDGE called and sworn for the plaintiff, and examined by Mr. KIRKHUFF, testified as follows:

Have you seen this patent since it was put in the office for a reissue?
I have.
Where did you see it?
I saw it in the possession of Mr. Holmes, at Cortland.
When was that?

Very soon after it was returned from the office.
About what year?
I think it was in the year '69.
There was no reissue granted?
There was none.
Was Mr. Collins present when you saw it there?
Not in Mr. Holmes' office, if I remember.
Did you see it on any other occasion?
I saw it in Philadelphia.
When was that?
That was in the spring of 1869, if I remember correctly; I saw it after it was returned in the year 1869, first at Holmes'.
In whose possession was the patent when you saw it in Philadelphia?
He, Peck, had the patent.
Mr. Reed Peck?
Yes, sir.
Did you see Mr. Collins have it?
Mr. Collins was present when the patent was in Philadelphia at that time.
What Collins?
J. Van Allen Collins.
Not the defendant?
No, sir; not the defendant.
What was J. V. Collins doing with it?
I don't know as I can say how he came to have the patent in his possession at all; I know the fact of seeing the patent, and had seen the patent, and knew it was returned.
J. V. Collins was a brother of the defendant?
Yes, sir.
Was he the agent of the defendant?
He was representing himself to be.
(Objected to.)
The COURT. That answer is excluded.
Do you recollect seeing the defend't when he was applying for another reissue of the patent from the Patent Office at Mr. Harding's office?
I think it was at this time that Mr. Collins was at my store. That he visited Mr. Harding's office with Mr. Peck.
That was the original patent that was returned to the Patent Office for reissue?
Yes, sir; it was.

19 GEORGE WALTER PECK being called and sworn for the plaintiff, examined by Mr. KIRKHUFF, testified as follows:
You are the plaintiff in this case?
I am.
Did you give Mr. Collins notice, or have you written him to fulfill this contract?
I wrote and gave him notice that I was ready to give him a deed as the contract requires.
When did you do that?
I did that on or before the 8th day of March, 1869, or about that time.
Did he acknowledge the receipt of that letter to you?
No, sir; he never did; that is, he never did to me.
Did he by letter?
No, sir; he did not by letter to me acknowledge it.

REED PECK being called and sworn for the plaintiff, and examined by Mr. KIRKHUFF, testified as follows:

You heard the evidence of Walter Peck?

Yes, sir.

Did you have a conversation with the defendant in which he said to you that he had received Walter's letter?

I did.

When was that?

That was in January or February, 1870.

At what place?

At Cortland.

Did you have any talk with Mr. Collins in regard to Van Allen having his patent down in the Patent Office?

Yes, sir; I did.

What did he state in regard to that?

He said that he had no time to attend to the patent, and he had told his brother to take it and do with it as he thought best, and manage it as he thought best, and he would be satisfied with whatever he did with it.

Did you see that patent in Philadelphia?

Yes, sir.

After it was returned?

I am quite certain I saw it there because I think he carried it down there, and I saw it but a few months afterwards in Cortland, in the hands of Mr. Holmes.

Was Mr. Holmes an attorney for Mr. Collins?

He was attorney for Byron Mudge and for Collins too.

(Objected to.)

I don't know that he had the power of attorney for Mr. Collins, but they both said he was, Mr. Collins and Mr. Holmes.

Did the defendant say so?

No, not the defendant, but J. V. Collins.

(Objected to.)

J. V. Collins was an agent of Truman in the management of the patent at the Patent Office?

(Objected to.)

He said he was his agent in '70, and we were talking about the patent from '68. In the spring of '68 Mr. J. V. Collins took possession of the patent and managed it, and had the management of it, and went over to Philadelphia.

Did he have the management of it in the Patent Office?

That was after the patent was returned from the Patent Office; he hadn't the management of it when it was in the Patent Office. The only times Mr. Collins said he was doing this by his direction, that is, that he had told him to take and manage it as he thought best, that is, from 1868 to 1870.

In the spring of 1868?

Mr. J. V. Collins told me the same; and in 1870 I first saw the defendant, and he then told me the same that J. V. Collins told me in the spring of 1868.

You saw the patent then in J. V.'s possession?

I saw it in his and Mr. Holmes possession; they were both together at that time.

When was this patent returned to the Patent Office for reissue?

I should think it was returned in the latter part of Dec., 1868, or Jan., 1869; somewhere about Jan., 1869.

When was it put into the office for reissue?

About the 5th of March, 1866.

When was it returned from the Patent Office?

About Jan., 1868; it may have been before; that is about the time I learned of it; it had been just returned.

From 1866 to 1868, was J. V. Collins acting as agent for Truman, as you was informed by Truman?

(Objected to.)

The COURT. State what was said in that respect by the defendant.

I don't know that Mr. J. V. Collins did anything with respect to the patent from 1866 to 1868. I did not know anything about it. I was gone all through 1867 from spring until fall.

21 Did Truman Collins tell you at any time that he didn't wish a deed of this patent, or decline to receive a deed of it?

Yes, sir.

When was that?

In 1870, at Cortland.

And after the patent had been returned from the Patent Office?

Yes, sir.

Cross-examination by Mr. WATERS:

Why did he say he didn't want it; or didn't he say why?

Well, I can't tell you just what he said.

Did he say he didn't want it because it was worthless?

No; I don't think he said that.

Didn't he say to you if George or his brother will give me a deed that they will warrant, I will pay the money?

He said nothing of the kind.

Did he say anything about warranty?

Not a word.

Did you tell him they never gave warranties in patents in the same conversation?

No, sir.

And that all a man ever conveyed was his right in the patent?

No, sir.

Did you tell him just those words?

No, sir.

Were you acting for your boys at that time?

No, sir.

Then you had nothing to do with it, excepting as an outsider, at that time?

I had nothing to do with it any way at that time further than this——

Answer my question. This conversation between you and him as to this man's acting was a casual conversation in which you was not interested, and had no business in the patent?

We were not talking about the patent. I was not doing anything about the patent, nor was he.

You was not authorized to do anything about it then?

No, sir.

It was a casual remark that he made, that whatever his brother had done in the matter, or that he told him that he might do as he was a mind to?

No, he told me that. I can tell you what called out the remark. He told me that he had said to his brother that he hadn't time himself to do anything with the patent and that he had told him to take it and man-

age it just as he thought best, and he would be satisfied with whatever he done with it. That was in answer to the question that I asked him.

22 You were asking on your own hook?

No, sir; my son, Walter Peck, had sent him to me to settle this matter.

Had they authorized you to settle with him?

I was authorized to see him.

Had your sons authorized you?

They hadn't said anything to me about it.

Then you had no authority to settle from them?

No, sir.

Or to do anything else in relation to it?

No, sir.

Do you know when this patent was surrendered?

Yes, sir.

When?

I think the 5th day of March. The application was made on the 5th day of March to surrender.

Of what year?

1866.

On that application an interference was asked to be declared by other parties?

Yes, sir; but not with other parties.

(Objected to. Objection sustained.)

Did you have anything to do with the surrender of the patent?

Yes, sir; a very little.

You acted as the agent of some of the parties?

I took the patent down to New York, and put it in the hands of the patent solicitor.

Did you act as agent of some of the parties?

I acted as the agent of Byron Mudge, or his wife sent me a letter and wanted me to go down there and take the patent down, as he was unable to do business himself.

It was surrendered because it was inoperative.

(Objected to. Objection sustained.)

Direct examination resumed by Mr. KIRKHUFF:

You said Truman told you in the conversation at Cortland that your son Walter sent you to him to arrange the matter?

Yes, sir.

So he brought the authority from your son to settle?

Mr. Waters asked me if Truman Collins said a certain thing to me in 1870, which I deny his saying, and I couldn't tell Mr. Waters when I heard him say that.

That was the time that Truman told you that he didn't want the deed?

Yes, sir.

Cross-examination by Mr. WATERS resumed:

23 When was it that he said what I asked you?

He said that in Norwich, when they expected to try the suit. I believe that Mr. Waters was present.

Plaintiff rests.

DEFENDANT'S COUNSEL. We ask that the court nonsuit the plaintiff on the following grounds:

First. That the plaintiff has not proved any valid patent.

Second. That he has not proved that he had any interest in any valid patent, or any capacity to perform the contract.

Third. That the patent referred to appears by the proofs to have been surrendered, and no reissue appears to have been made.

Fourth. That there is no proof there is any value in the letters patent, but that the proof shows there is no value in them.

Fifth. That the proof does not show any reissue or return of the patent on that application as required by the contract under date of July 11th.

Sixth. That the plaintiff has proved no ability to fulfill the contract.

The COURT. I think it is a question of fact for the jury.

Defendant's counsel duly excepted.

Defendant's counsel first offered in evidence a certified copy, &c., filed March 5th, 1866.

PLAINTIFF'S COUNSEL. We object to this evidence on the ground that it is not admissible.

The COURT. I am inclined to receive the evidence.

PLAINTIFF'S COUNSEL. I do not object to their proving the original patent, or that the original patent was returned.

The COURT. They have the right to prove precisely what did occur in relation to the surrender and reissue or return of the original patent. I will receive this evidence.

Plaintiff's counsel duly excepted.

Defendant's counsel here read in evidence the document offered in evidence, as follows:

24 Pl'ff's counsel further objected to the evidence on the ground that it is incompetent, irrelevant, and immaterial, and also that the application for the original reissue has nothing to do with the original patent or its return, and that it does not appear to be a complete record.

The COURT. The objection is overruled.

Def't's counsel duly excepted.

Def't's counsel then put in evidence and read the document referred to, as follows:

The U. S. Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office of the file wrapper and contents in the matter of the application of Byron Mudge, filed March 5th, 1866, for "mode of sinking wells."

In testimony whereof I, M. D. Leggett, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this 4th day of April, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States ninety-eighth.

[SEAL OF THE PATENT OFFICE.] M. D. LEGGETT,
Commissioner.

To Commissioner of Patents:

The petition of Byron Mudge, of Vineland, in the county of Cumberland, State of New Jersey, respectfully represents that he did obtain letters patent of the United States for an improved mode of sinking wells, which letters patent are dated in the twenty-fourth day of October, 1865; that he now believes the same to be inoperative and invalid by reason of a defective specification, which defect has arisen from inadvertence and mistake. He therefore prays that he may be allowed to surrender the same, and requests that new letters patent may issue

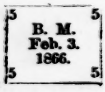
to him for the same invention for the residue of the period for which the original patent was granted under the amended specification
25 hereunto presented, he having paid thirty dollars into the Treasury of the United States, agreeably to the requirments of the act of Congress in that case made and provided, and he appoints Dr. S. D. Gale, of New York, to act as his attorney. Address at Cooper's Institute, city of New York.

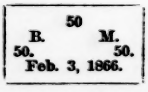
BYRON MUDGE.

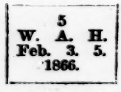
STATE OF NEW JERSEY,
County of Cumberland, ss:

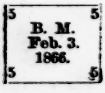
On this third day of February, 1866, personally appeared before me, a commissioner in and for said county, the above-named Byron Mudge, and made solemn oath that he verily believes that by reason of an insufficient or defective specification his aforesaid patent is not fully valid and available to him, and that the said error has arisen from inadvertence, accident, or mistake, and without any fraudulent or deceptive intentions to the best of his knowledge or belief.

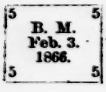
WILLIAM A. HOUSE,
Commissioner.

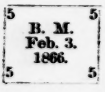












To all whom it may concern:

Be it known that I, Byron Mudge, late of Cortlandville, in county of Cortland, and State of New York, but now residing in Vineland, county of Comberland, and State of New Jersey, have discovered a new principal of construction for wells, and an improved method for carrying it into practice, by which a supply of water may be readily obtained for family use, or for an army on the march or in camp. The methods hitherto in use for sinking wells are—

First, digging and walling up as practiced in sinking wells for family or farm use.

Secondly, boring and drilling artesian wells for water, salt, or oil. Both of these methods make it necessary to remove the dirt and cuttings by taking them out at the surface of the ground as the work progresses.

26 My invention, or the principle on which I make wells, is more particularly adapted to localities where no rock intervenes, and it consists in making and lining wells with tube or pipe, without removing the dirt or gravel therefrom, and notwithstanding the pipe is packed its whole length by earthly material around it, still it will yield an abundant supply of clear water, limited only by the amount of water reached by the pipe; I do not use a drill, neither a borer. We pierce cloth with a needle, leather with an awl, iron with a punch, the earth with a *cross*-bar. In making wells I use a long crow-bar or piercer. To enable others skilled in the art to use my invention, I will proceed to describe my method of making wells, in connection with the tools adapted thereto, and I hereby declare that the following is a full and exact description thereof, reference being had to the accompanying drawings, and to letters of reference marked thereon.

My method of making wells is as follows:

By means of a small pile driver or a sledge hammer, I drive vertically into the ground a pointed iron or steel bar, till it has penetrated to a suitable depth, say four to six feet into the water under ground. I then withdraw the rod or bar and insert in its place a properly prepared pipe of nearly the same size; this completes the well and without removing dirt therefrom. To use this well I attach any pump to the top of the pipe by a screw thread or otherwise, and work the pump in the usual way. In cases where the soil is yielding and free from stone, the pipe may be driven to a sufficient depth without drawing the bar.

In the description of the tools and pipe, let figure 1 represent a perspective view of the small pile driver with the bar A in position for driving, B being the hammer or driver weighing about one hundred pounds and operated in the usual manner of such machines by means of windlass C and cord E.

27 Fig. 2. The pointed iron bar made in section, D, E, and screwed and keyed together by coupling represented at E so as to provide for different depths.

Fig. 3. A clamp ring used for drawing the bar from the ground, and is operated by any strong lever inserted in the link E, or a stout chain may be used instead of the ring.

Fig. 4 is the pipe, which may be ordinary gas pipe, one or two inches in diameter. In the lower end of the pipe a pointed plug, H, is inserted to keep out the gravel and fit it to be more easily forced into the ground instead of the plug. The lower end of the pipe may be welded up and pointed for the same purpose. Near the lower end of the pipe are small openings (A) for the admission of water into the pipe, when in its place in the well.

In cases where the pipe thus prepared is to be passed through quicksand or some kinds of clay, it is necessary to fill the lower end of the pipe with packing of some kind, such as a piece of rope or its equivalent, a cord being fastened to it by which to pull it out when the pipe is down to its proper position. The packing is to prevent the pipe from filling in with quicksand through the small openings (A) while being forced down through the quicksand.

My wells are made where no rocks are to be drilled or bored. Prior to my experiments it was not known that by forcing a properly prepared pipe down into the water under the ground, removing no dirt, and attaching a pump, the result would be an inexhaustible well of clear water.

My invention therefore is as broad as the work I have accomplished. I have made a well and lined it with pipe without removing the earthy contents of said well, only displacing them with the bar or pipe.

What I claim therefore as my invention and desire to secure by letters patent, is making and lining wells with pipe without removing the earthy contents therefrom substantially in the manner and for

28 the purpose herein set forth. I also claim the said prepared pipe with any suitable pump attached when used in the construction of wells in the principle herein set forth.

BYRON MUDGE.

Witnesses:
ALBERT S. ROLLO.
W. A. HOUSE.

U. S. PATENT OFFICE,
March 20, 1866.

SIR: Your application for a re-issue of your patent, granted Oct. 24th, 1865, together with your letter of the 3rd inst., asking that an interfer-

ence be declared between the application and the patent of James Suggett, have been received. Suggett has two patents, one dated March 29, 1864, and one dated Feb. 6, 1866. You do not say with which of these you wish an interference.

Respectfully,

E. BIBB.

BYRON MUDGE, Esq.,
Care L. D. Gale, Esq.,
Cooper Institute, Room 17,
New York.

NEW YORK, COOPER INSTITUTE,
March 22, 1866.

Hon. Commissioner of Patents:

SIR: I have the honer to acknowledge yours of the 20 inst., respecting the interference of Byron Mudge and James Suggett, of Cortlandville, New York State, which is asked by Mudge; you remark that Suggett has one patent of 24 Oct., '65, and one of February, 1866, and that we do not say which the interference should be declared on. To this it is replied, Mudge claims this whole process of making and sinking wells, as described in the papers for a reissue. If both of the Suggett patents interfere with Mudge's reissue, then the office will of course declare such interference. If there be any other interference will of course decide and declare accordingly. The parties are all anxious to decide on this matter as early as possible. Please forward the
29 papers of declaration of the interference as early as practicable.

Respectfully,

L. D. GALE,
Att'y for Mudge.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
Washington City, D. C., March 3, 1866.

SIR: You are hereby notified that your application for a patent for mode of sinking wells has been adjudged to interfere with patent granted to James Suggett, March 29, 1864, and the application of Nelson W. Green for like inventions. Notice has been given to James Suggett, Cortland Village, New York, and to A. B. Stoughton, of Washington City, D. C., who is attorney for Nelson W. Green. A hearing to the parties will be granted on the fourth Monday in May next. The testimony must be closed on the Monday preceding the day of hearing, and must be taken, certified, and transmitted to the Patent Office in accordance with the enclosed rules. Arguments must be in the office on the day of hearing. The main thing to be proved is the date of your invention.

Yours, respectfully,

Commissioner of Patents.

BYRON MUDGE, Esq.,
Care L. D. Gale, Esq.,
Cooper Institute, New York.

ASSISTANT ASSESSOR'S OFFICE,
U. S. INTERNAL REVENUE,
Cortland, April 2nd, 1866.

I certify that Arthur Holmes, of Cortland Village, Cortland County,

New York, has this day made application for a license as patent right agent, from April 1st, 1866, and has paid 83 cents for the same.

P. HOLMES,
Ass't Assessor 16th Div., 23rd Dist., N. Y.

30 CORTLAND VILLAGE, N. Y.,
2nd April, 1866.

Hon. T. C. THEAKER,
Commissioner of Patents, Washington, D. C.

DEAR SIR: Enclosed please find power of attorney from Byron Mudge, in the matter of his application for the reissue of his patent for a new Mode of Sinking Wells Permit me to solicit your early attention to the matter of this application, which I learn was filed and fee paid, March 5th ult. Should it be found upon examination that the application for reissue interferes with a patent issued to James Suggett, bearing date 29th March, 1864, for improvement in pumps for bored wells, I ask that interference be declared at as early a day as practicable. I will thank you to apprise me of any steps taken in the premises at your earliest convenience.

Very respectfully,

ARTHUR HOLMES.

Power of attorney.

Know all men by these presents, that I, Byron Mudge, of Vineland, State of New Jersey, have made, constituted, and appointed, and by these presents, do make, constitute, and appoint Arthur Holmes, of Cortland Village, Cortland County, New York, my true and lawful attorney for me and in my name, place, and stead, to have and to do all things needful in the matter of my application for a reissue of a patent heretofore granted to be me by the Commissioner of Patents, in and for the United States, for "A new Mode of Sinking Wells," the said patent bearing date Oct. 24, 1865, having been surrendered and a reissue thereof applied for by me, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney as his
31 substitute shall lawfully do or cause to be done by virtue thereof, and I hereby revoke all other power of attorney by me granted for the purpose hereof.

50 B. Mudge, April 2, 1866. 50

In witness whereof, I have hereunto set my hand and seal the 2d day of April, 1866.

BYRON MUDGE. [SEAL.]

Sealed and delivered in presence of—
AB'M MUDGE.

UNITED STATES PATENT OFFICE,
April 6, 1866.

SIR: Your power of attorney to Arthur Holmes has been placed on file. The enclosed copy of notice of interference will give you the information you desire as to the present condition of the case.

Respectfully,

BYRON MUDGE, Esq.,
Care of Arthur Holmes, Esq.,
Cortland Village, New York.

Room 87—E. BEBB.

REC. 433—2

CORTLAND VILLAGE, N. Y.,
12 *May*, 1866.

DEAR SIR: Please find enclosed affidavits for extension of time for taking evidence, and a hearing in the interference named in the affidavits. Hoping the request may meet your sanction,

I am, very truly yours,

ARTHUR HOLMES.

Hon. T. C. THEAKER,
Com'r of Patents, Washington, D. C.

In the matter of the interference adjudged between the patent granted to James Suggett, March 29, 1864, and the application of N. W. Green, and the application of Byron Mudge, for a reissue of a patent.

STATE OF NEW YORK,
Cortland County, ss:

Reed Peck, of Cortland Village, in said county, being duly sworn, says that he is the general agent af Byron Mudge, in reference to his patent and in attending to the matter of the reissue of the same.

And deponent says that notice of interference herein
32 issued by the Commissioner bears date 31st Mar., 1866, and that by the terms thereof evidence herein is required to be closed on the third Monday of the month, and argument submitted on the fourth Monday. That he caused immediate steps to be taken, on the receipt of the notice of interference, to take evidence herein, and that many days have been already employed in taking testimony, and that there are other witnesses to be sworn on the part of said Mudge, whose attendance cannot now be procured, and that it will be necessary to have an extention of time for taking testimony herein on behalf of said Mudge, and that the evidence of said Mudge cannot be closed at the time fixed by the Commissioner without prejudice to the interest of said Mudge, and by a reasonable extension of time for taking the deponent believes the necessary witnesses now absent can be procured to give testimony herein. That Mr. Mudge is not now in this town, and deponent has the general charge of procuring the attendance of witnesses in his behalf, and that the witnesses whose attendance has not yet been secured are material and necessary.

REED PECK.

Sworn to before me this 12th day of May, 1866.

E. P. SHAFTER,
Notary Public.

5 5
R. P. May
1866.
5 5

STATE OF NEW YORK,
Cortland County, ss:

Arthur Holmes, of Cortland Village, in said county, being sworn, says that he is the attorney and counsel of Byron Mudge in these proceedings and in the matter of a reissue of his patent; that he has had charge of his case herein. That the greatest diligence has been exercised on the part of Mr. Mudge and his attorney to procure the testimony of his witnesses. That some ten days have been employed by the contestants; and that Mr. Mudge's evidence is not yet complete,

33 and some days must elapse before the attendance of all his witnesses can be secured. That since the notice of interference was received there has been held a term of the supreme court in and for said county, lasting two weeks, which was so much an interference in these proceedings. That on the 1st Monday of June next commences another term of the supreme court of this State, which will probably continue in session about two weeks. That deponent expects to be occupied in said court, also to be much occupied prior to the setting of the court in preparing for the same. That much time will be required to prepare the argument herein, as the evidence is very lengthy, covering many hundred folios, and deponent believes that justice would be promoted by an extension of time for the taking of evidence and filing of arguments, and that two weeks' extension of time for the taking of evidence, and four weeks' extension for the filing of arguments, and hearing beyond the time fixed in the notice of interference, is necessary and proper to be allowed.

And deponent respectfully requests that extension be so granted.

ARTHUR HOLMES.

Sworn before me this 12th day of May, 1866.

E. P. SHAFTER,
Notary Public.

Edwin P. Shafter, Notary Public.	5 A. H. May 12th. 1866. 5

U. S. PATENT OFFICE,
Washington, D. C., May 16th, 1866.

SIR: In the matter of interference declared by this office between the applications of Byron Mudge and Nelson W. Green and the patent of James Suggett, dated March 29th, 1864, you are informed that the hearing is postponed (sufficient reason having been shown) to the fourth Monday in June, 1866.

Yours, respectfully,

Commissioner.

BYRON MUDGE, Esq.,
Care Arthur Holmes, Esq., Cortland Village, N. Y.

34 CORTLAND, N. Y., *June 12th,* 1866.

Hon. T. C. THEAKER,
Comm'r of Patents:

DEAR SIR: Enclosed please find an affidavit asking for an extension of time for a hearing in the matter therein stated. I deeply regret the necessity of asking this indulgence. It comes from one of those causes beyond human control. I trust it may please you to give the extension. And I will ask also that you do me the kindness to telegraph me at this place what it will please you to do in the case, as it will be of great importance to my client that I know as soon as possible the day of hearing.

Permit me to hear from you as soon as practicable. I some time since wrote asking for a copy of the specification of N. W. Green to use on the hearing. Is it proper for the office to furnish them? If so, I will remit fees so soon as I learn the am'ts, or you may send, per express, collect on delivery. I would much like the papers.

Very truly, yours,

ARTHUR HOLMES.

In the matter of the interference adjudged between James Sugget, Byron Mudge, and N. W. Green for mode of sinking wells, &c.

CORTLAND COUNTY, *ss:*

Arthur Holmes, of Cortland, in said county, being duly sworn, says that he is the attorney and counsel for Byron Mudge in the matter of this interference; that the evidence was closed in the same on the 7th inst., and that the day of hearing is fixed for the fourth Monday of June inst., one week from Monday next; that the testimony taken on the interference amounts to over one thousand folios.

And deponent further says that he is now afflicted with an in-
35 flammation of the eye, which renders it very difficult for him to examine the testimony and prepare an argument in the case, and which will render it next to impossible for him to prepare an argument within the time required, and there is no person who has knowledge of the evidence to prepare an argument in the cause within the time fixed for hearing; and deponent further says that he and his client are desirous of bringing this case to a hearing at the earliest day possible, and that this extension of time is asked for no other purpose and upon no other grounds than that stated, that of inability on the part of deponent to prepare the case for a hearing by reason of physical disability, and deponent therefore respectfully asks that the time for the hearing in this cause be extended from the 4th Monday of June to the 2nd Monday of July next, that justice will be promoted by such extension of the time of hearing.

ARTHUR HOLMES.

Sworn to before me this 12th day of June, 1856.

D. H. BURR,
Notary Public.

CORTLAND, N. Y., *22nd June*, 1866.

Hon. T. C. THEAKER,
Commissioner:

DEAR SIR: I send you by this day's mail argument on the part of Mr. Mudge for the hearing fixed for Monday next, in the interference between him, James Suggett, and N. W. Green.

Very respectfully,

ARTHUR HOLMES,
Attorney for Mudge.

DEPARTMENT OF THE INTERIOR,
U. S. PATENT OFFICE,
Washington, June 27, 1866.

SIR: You are hereby informed that in the case of interference between your claims and those of James Suggett and Nelson W. Green for improved mode of sinking wells, upon which an hearing was ap-
36 pointed for the fourth Monday in June, the question of priority of invention has been decided in favor of James Suggett. An appeal may be taken from this decision within thirty days. See sections 2 and 3 of the act of March 2, 1861.

Yours, respectfully,

Com'r of Patents.

BYRON MUDGE,
Care Arthur Holmes, Esq., Cortland Village, N. Y.

CORTLAND, N. Y., 17*th July*, '66.

Hon. T. C. THEAKER,
Com'r of Patents, Washington, D. C.:

DEAR SIR: I send you by this day's mail an application for appeal from the decision of the examiner to the board of examiners-in-chief in the case of interference of James Suggett and N. W. Green with Byron Mudge for mode of construction of wells, &c.

Very respectfully,

ARTHUR HOLMES,
Att'y for Mudge.

$10.00.

CORTLAND, N. Y., 16*th July*, '66.

Hon. T. C. THEAKER,
Com'r of Patents, Washington, D. C.:

DEAR SIR: Please find enclosed an application for an appeal from the decision of the examiner in the interference case of James Suggett and N. W. Green with Byron Mudge for mode of constructing wells, &c., to the board of examiners-in-chief. I also request that an oral hearing be allowed before the board if consistent with the practice of the office. I do not understand that the rule of the office requires me to serve notice of appeal upon the contesting parties, but that a day is fixed by the Commissioner for a hearing on the appeal and all parties notified. Am I correct? I enclose ten (10) dollars to cover the fees of an appeal to the board under the recent act of Congress. I do
37 not know that the act has taken effect requiring the fees. If not, please correct the error.

Very respectfully,

ARTHUR HOLMES,
Attorney for Mudge.

In the matter of the interference adjudged by the honorable Commissioner between the letters patent issued to James Suggett Mar. 29th, 1864, and an application of N. W. Green with the application of Byron Mudge for the reissue of letters patent granted him October 24th, 1864, for mode of constructing wells, &c.

To the Hon. COMMISSIONER OF PATENTS:

SIR: In conformity to sections 2d and 3d of the act of Congress dated March 2nd, 1861, I hereby make application for an appeal from the decision of the examiner in the matter of the interference adjudged between my application for a reissue of letters patented granted to me October 24th, 1865, for mode of sinking and constructing wells, and letters patent granted James Suggett March 29th, 1864, and an application by N. W. Green for letters patent, which decision of the examiner was rendered on the 27th day of June, 1866, in favor of James Suggett, and request that the same may be heard by the examiners-in-chief, and that an oral hearing be allowed before the examiners-in-chief.

Dated June 16th, 1866, Cortland, N. Y.

Very respectfully,

BYRON MUDGE,
By ARTHUR HOLMES,
Attorney for Mudge.

U. S. PATENT OFFICE, *July* 23, 1866.

SIR: On Tuesday, the 28th day of August next, the examiners-in-chief will proceed to consider and determine the interference now pend-

ing before them on appeal between the respective applications of Byron Mudge and N. W. Green and for a patent for a mode of
38 sinking wells, and the patent for a patent for a similar invention granted March 29th, 1864, to James Suggett.

Respectfully yours,

BYRON MUDGE,
Care Arthur Holmes, Esq., Cortland, N. Y.
JAMES SUGGETT,
Care R. H. Duell, Esq., Cortland, N. Y.

CORTLAND, N. Y., *Sep. 19th*, 1866.

Hon. R. C. THEAKER,
Commissioner of Patents:

DEAR SIR: I enclose an affidavit in the interest of Mudge, in the interference of Suggett, Mudge and Green, now before the board of examiners-in-chief; it was deemed advisable to submit in the form of affidavit the fact that the disclaimer was made without the knowledge of Mudge, and by an error; this we show by the enclosed affidavit, and shall send a further one from the attorney as soon as rec'd. Mr. Mudge is out of the State or I would enclose his.

Very respectfully,

ARTHUR HOLMES,
Attorney for Mudge.

STATE OF NEW YORK,
Cortland County, ss:

Reed Peck, of Cortland Village, in said county, being duly sworn, says that in the matter of the application for a patent by Byron Mudge, made in August, 1865, for mode of sinking wells, he had the general charge of the business for Mr. Mudge, Mr. Mudge himself being still disabled by reasons of wounds received in the battle of Five Forks; that such application was rejected twice by the primary examiner, and deponent did thereupon, without the knowledge of Mudge, place the business in the hands of Messrs. Cochrane and Todd, of New York, to bring an appeal to the board of examiners-in-chief, deponent at the time instructing such attorneys that the application must go through as it then stood or let an interference be declared. That what
39 Mudge invented was set forth and no disclaimer must be made or allowed. On or about Oct. 27th, 1865, the patent was secured by deponent for Mr. Mudge, and then for the first time was it known to deponent that a disclaimer had been made. That Mr. Mudge came to this place about the middle of November following, at which time deponent gave him the letters patent, and then was the first knowledge Mudge had that any disclaimer had been made. He expressed great surprise and dissatisfaction at such disclaimer, and requested that steps be taken at the earliest convenience for a surrender and a reissue. That after some necessary consultation, deponent under solicitation of Mr. Mudge did on the 3d day of January, 1866, place the letters patent in the hands of Mr. Gale, of New York, for a surrender and reissue. Why the surrender was delayed by him to March following, deponent cannot state. Deponent understood from Messrs. Cochrane & Todd that the case was in regular form appealed to the board, and the reasons for the disclaimer, set forth in the opinion of the board, no regular appeal appears to have been taken. Deponent further understood from such attorneys that the disclaimer was advised by the office and suggested as

the terms on which the patent might be issued without interference. And deponent says that the disclaimer was made with the knowledge of himself or Mudge, and was an error which the earliest practicable steps have been taken to have remedied.

REED PECK.

Sworn to before me this 19th Sept., 1866.

J. P. HOLMES,
Notary Public.

5 5
J. P. H.
19th Sept.
1866.
5 5

CORTLAND, N. Y.,
Dec. 13, '66.

Hon. T. C. THEAKER,
Commisioner of Patents, Washington, D. C.

DEAR SIR: Permit me to inquire whether there has been rendered a decision in the interference case of Mudge, Suggett and Green, in the matter of bored or driven wells. The case is an appeal to the
40 board of examiners in chief and was argued on the 28th and 29 of Aug. last. A rumor was obtained that a decision has been made. If so, notice thereof has failed to reach me, as I suppose it should, representing as I do Mr. Mudge, as his attorney. Will you have the kindness to send me a copy of the last issue of the rules and regulations of the Patent Office?

Very respectfully,

ARTHUR HOLMES.

U. S. PATENT OFFICE,
Dec. 22*nd*, 1866.

SIR: In reply to your letter of the 13th inst., you are informed that a decision has been made by the board in the case of Green vs. Suggett and Mudge, but not yet officially promulgated. You will probably be notified of the result in a few days.

Respectfully, yours,

Commissioner.

ARTHUR HOLMES,
Cortland, N. Y.

U. S. PATENT OFFICE,
Dec. 27*th*, 1866.

SIR: The examiners in chief on appeal to them revise the decision by the examiner in charge, awarding priority of invention to James Suggett, and order the reissue of letters patent of Byron Mudge. Said decision being in the matter of interference between said Suggett, Mudge and Nelson W. Green. An appeal can be taken from this decision within thirty days from this date.

Yours,

BYRON MUDGE,
Care of Arthur Holmes, Cortland Village, N. Y.

41 U. S. PATENT OFFICE,
Jan. 11*th*, 1867.

SIR: The day of hearing of the appeal of James Suggett from the board of examiners in chief to the Commissioner of Patents, in the mat-

ter of interference with Byron Mudge and A. W. Green is fixed for the 2nd Monday of February next.

Yours,

BYRON MUDGE.
Care of Arthur Holmes, esq., Cortland Village, New York.

U. S. PATENT OFFICE,
Feb. 6th, 1867.

SIR: The day of hearing an appeal of the interference between Green, Suggett and Mudge is postponed to the 4th Monday of February inst.

Yours,

BYRON MUDGE,
Care of Arthur Holmes, Cortland Village, N. C.

In the matter of the interference between James Suggett, Byron Mudge and N. W. Green, for driven wells, &c.

CORTLAND, N. Y.,
Feb. 14th, '67.

Hon. T. C. THEAKER,
Com'r of Patents, Washington, D. C.

DEAR SIR: I am this day served with a paper of which the enclosed is a copy. One extension has been accorded to Mr. Green, the other parties consenting, and when the enclosed was served by Mr.
52 Green, I stated to him that justice to my client would render it necessary for me to oppose his application for further time, and I feel warranted in so doing from the further consideration that I am convinced that this application is made simply for the purpose of keeping off the day of hearing. Mr. Green was ill last fall, but for weeks past has been about the streets of our town like other men, and it seems he is able to attend to other business. But were he ill it would be no ground for extending the time for hearing an appeal. Mr. Green has an able attorney, Mr. Gifford, of New York City, who submitted an argument for his client when the interference was heard before the board of appeal, and presented in his argument all that could or can be said in support of Green's case, and it does not appear that Mr. Gifford is unable to attend to the case before your honor on the appeal. While the evidence in the case is voluminous, the question at issue is a simple one, and is principally a question of fact on the evidence, and the application of the law to the case.

There is no machinery to be illustrated or explained. Green does not propose to have any knowledge of patent law or the practice, and to ask an extension of time upon the ground stated by him seems to me simply absurd.

I wrote this line simply to indicate our desire to oppose at the proper time the application, if such it can be called, of Green for extension of time. And that we feel assured the interests of the parties as well as the public require the earliest possible determination of this interference.

I am with respect, very truly yours,

ARTHUR HOLMES,
Attorney of Mudge.

DEPARTMENT OF THE INTERIOR,
U. S. PATENT OFFICE,
Washington, Aug. 21st, 1867.

43 SIR: You are hereby informed that in the case of interference between your claims and those of James Suggett and Nelson W. Green, upon appeal to the Commissioner of Patents, upon which a hearing was appointed for the second Monday of March, 1867, the question of priority of invention has been decided in favor of said Suggett.

An appeal may be taken from this decision within 20 days, see section 2 and 3 of act of March 2d, 1861.

Yours respestfully,

Commissioner of Patents.

BYRON MUDGE,
Care of Arthur Holmes, esq., Cortland Village, N. Y.

DEPARTMENT OF THE INTERIOR,
PATENT OFFICE,
Washington, D. C., Jan. 8th, '68.

SIR: You are hereby informed that the decision of the Commissioner of Patents has been affirmed by the supreme court of the District of Columbia in the matter of interference between the several applications and patents of Byron Mudge, James Suggett and N W. Green, the patent of Suggett being sustained, and a patent awarded to said N. W. Green.

(Signed) B. F. JAMES,
Ex'r in Charge.

BYRON MUDGE,
Care Arthur Holmes, esq., Cortland Village, N. Y.

Interference between Suggett, Mudge & Green.

Mr. Holmes for Mudge.

Suggett obt'd patent in March, '64. Mudge app'd for patent in Aug., '65. Green's application, March, '66.

2nd. The assignment of the equal undivided half to Peck and Peck in Nov., 1865, pending a reissue.

Reissue, 847.

44 1866.

No. . Byron Mudge, of Vineland, county of Cumberland, State of New Jersey.

Mode of sinking wells.

Rec'd	March	5th,	1866.
Petition,	"	"	"
Affidavit,	"	"	"
Specification,	"	"	"
Drawing,	"	"	"
Model old pat.	"	"	"
Cert. dep.	"	"	"
Cash $30,	"	"	"
Addl. fee cert.			
" " cash.			
Examined.			
Issue.			
Patented 186.			

Recorded vol. page.
Circular.
Arthur Holmes.
Cortland Village, 1866, N. Y.
1866.
March 20th, '66, letter.
March 31st, '66.
Interference with patent of James Suggett, March 29th, 1864, and application of Nelson W. Green.
Hearing, 4th Monday May, '66.
April 6th, letter.
Hearing, 4th Monday June, '66.
June 27th, '66, priority of invention decided in favor Suggett. 30 d's to appeal.
Dec. 27th, L. decr. exr's in chief. 30 d's to appeal.
Jan. 11th, '67, L. appeal to com'r.
Feb. 6th, '67, L. hearing postponed to 4th Monday July, '67.
E. S. A. E. B. Aug. 21, '67, L. decr. com'r., 1866.

Def't's counsel next offered in evidence certified copies of the file of the Patent Office or a file wrapper, or contents in the matter of letters patent granted to Byron Mudge, October 24th, 1865.

45 PL'FF'S COUNSEL. We make the same objection as before and also that the defence is not authorized by the pleadings and also that it does not appear to be a complete record.

The COURT. The objection is overruled.

Pl'ff's counsel duly excepted.

Def't's counsel here put in evidence the paper referred to and read the same as follows:

The U. S. Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files from this office of the file wrapper and contents in the matter of the letters patent granted Byron Mudge, dated October 24th, 1865, No. 50614, for improved mode of sinking wells.

In testimony whereof, I, M. D. Leggett, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this 2nd day of April, in the year of our Lord 1874, and of the Independence of the United States the ninety-eighth.

[SEAL OF THE PATENT OFFICE.] M. D. LEGGETT,
Commissioner.

AUBURN, *Aug.* 7, 1865.

DEAR GOVE'NOR. The bearer of this is my brother, a resident of Cortland Co. He goes to Washington in behalf of a returned veteran wounded soldier to secure for him a patent for a new invention for sinking wells. The soldier is a neighbor of my brothers and returns from the war disabled for life by a shattered arm. His dependence for a livelihood is upon the patent he hopes to secure for his invention. What I wish to request, gove'nor, is a note from you to the Com'r of Patents asking him to examine the wounded soldier's application out of its regular order. If you will do this you will confer a great favor

46 upon one who has served his country faithfully and at the same time place me under renewed obligations.

Very respectfully, yours,

GEO. W. PECK.

The examiner is authorized to take up this case out of its order in courtesy to Mr. Seward.

Aug. 11, 1865.

D. P. HALLOWAY,
Commissioner.

I introduce Mr. Peck with pleasure to the Com'r of Patents. I forbear from recommending because I never recommend anything of the nature of this matter to your office.

WILLIAM H. SEWARD.

Petition to the Commissioner of Patents.

The petition of Byron Mudge in the county of Cortland, and State of New York, respectfully represents that your petitioner has invented a new and useful mode of sinking and constructing wells, which he verily believes has not been known or used prior to the invention thereof by your petitioner. He therefore prays that letters patent of the United States may be granted to him therefor, vesting in him and his legal representatives the exclusive right to the same, upon the terms and conditions expressed in the acts of Congress in that case made and provided, he having paid fifteen dollars into the Treasury and complied with the other provisions of the said acts.

BYRON MUDGE.

COUNTY OF CORTLAND,
State of New York, ss:

On this 4th day of August, 1865, before me, the subscriber, a justice of the peace, personally appeared the within named Byron Mudge and made solemn oath that he verily believes himself to be the original
47 and first inventor of the mode herein described for sinking or constructing wells, and that he does not know or believe the same was ever before known or used, and that he is a citizen of the United States.

5	5
Int.-Rev. Inl'd Exchange.	
5	5

H. I. COLLINS,
Justice Peace.

To all whom it may concern:

Be it known that I, Byron Mudge, of Cortlandville, in the county of of Cortland, in the State of New York, have invented a new and improved mode of sinking and constructing wells by which a supply of water may be readily obtained for family use, or for an army on the march or in camp.

The modes for sinking wells heretofore in use are:

First. Digging and walling up as is generally practiced in sinking wells for family or farm use.

Second. Boring and drilling, in sinking artesian wells, salt wells, and oil wells, both of which modes make it necessary to remove the dirt by taking it out at the surface of the ground as the work progresses.

My invention consists in driving a pointed bar of iron or steel perpendicularly into the ground until it has penetrated from four to six feet into the water under the ground, withdrawing the rod and inserting a pipe of nearly the same size in its place, which completes the well.

By this process there is no dirt removed or brought to the surface. By attaching any of the pumps now in use to the top of the pipe a copious supply of water may be drawn from wells sunk in this manner, and as far as I have experimented they prove inexhaustible.

With one man to help, I have sunk a well by this process to the depth of twenty feet in two hours' time.

To enable others to use my invention, I will proceed to describe my process or mode of sinking wells in connection with the tools adapted thereto, and I do hereby declare that the following is a full and
48 exact description thereof, reference being had to the accompanying drawings and to letters of reference being marked thereon.

Fig. 1 is a view of a small pile driver with iron or steel rod, shown at "A" in position to be driven. At "B" is shown the driver which should weigh about 100 lbs.; the driver is operated in the usual way or by means of a windlass and cord shown at "C." The pointed iron or steel rod (A Fig. 1) I make two inches more or less in diameter, and to provide for different depths I make it in sections as shown in Fig. 2), the connection being made by screwing the upper section D into the thimble E or by any means equivalent thereto.

Fig. 3 is a view of the clamp ring used for drawing the rod from the ground. and is operated by any strong lever inserted in the link G.

Fig. 4 is a view of the pipe to be put down after driving and withdrawing the rod. The pipe should be about two inches in diameter and made of some strong metal, ordinary gas pipe is perhaps most preferable. A plug shown at H is inserted in the lower end of the pipe to prevent its getting choked with gravel and is made pointed for the purpose of guiding the pipe as it is forced down to its place in the well. The small openings of any shape most convenient to make, shown at A near the bottom of the pipe, are for the admission of water into the pipe when put into the well.

My process for sinking a well is,

First. Driving the rod A to the required depth by means of the pile driver (Fig. 1,) or by heavy sledge where the soil or earth is not too compact.

Second. Withdrawing the rod by means of the clamp (Fig. 3) (or by any means that will effect the object.) The rod being withdrawn, inserting the pipe in its place driving it down if necessary. Where the earth or soil is light and free from stones, the pipe may often be driven to a sufficient depth for a well, without driving the rod.

Any of the ordinary pumps now in use may be attached to the
49 pipe after it is in place, by cutting a thread on the top of the pipe and screwing on the pump or by any means that will effectually exclude the air.

Drilling and boring wells, I do not claim as my invention, as these modes of operation have long been known.

BYRON MUDGE.

Witness:
REED PECK.
EBENEZER MUGDE.

CORTLAND, *Aug.* 15, 1865.

To the COM'R OF PATENTS:

Please find herewith the drawings in the case of Byron Mudge, application for patent for new mode of sinking wells, deposited in Patent Office, 10th inst. Hoping the drawing may be satisfactory,

I remain, yours respectfully,

REED PECK.

U. S. PATENT OFFICE, *Aug.* 25, 1865.

SIR: Your application for patent for mode of sinking wells is rejected. See James Suggett's patent for "imp. in bored wells," March 29th, 1865.

Yours,

BYRON MUDGE,
Care, Reed Peck.
Care O. C. Fox, Office County Gen. of Subsistence. Present.
B. J.

CORTLAND, *Sept.* 11, 1865.

To the COMMISSIONER OF PATENTS:

SIR: Yours of the 25th ult. has been received, giving me notice of the rejection of my application for patent for mode of sinking wells, and referring me to James Suggett's patent for improvement in bored wells, March 29th, 1864. A certified copy of the specifications in the patent referred to for "improvement in pumps for bored wells," is before
50 me, and failing to discover an interference in the claims, I respectfully ask a re-examination of my case by the examiner having it in charge, believing, as I do, that I am the inventor of the mode of sinking wells as set forth in my specifications. James Suggett declares that his method of putting down a well is by "boring with any ordinary drill, &c.," to the "required depth"; boring and drilling I disclaim as not being new, see specifications; both in my oath and declaration, I define my invention to be "a new and useful Mode of Sinking Wells." I further state that my invention consists in driving a pointed rod of iron or steel into the ground, &c., withdrawing the rod and inserting a pipe in its place, which completes the well. My process or Mode of Sinking a Well is again more particularly described, and the steps in the process marked as follows: first driving the rod "A" to the required depth by means of the pile (Fig. 1), or by a heavy sledge, &c. Second, withdrawing the rod by means of the clamp, &c. Third, the rod being withdrawn, inserting the pipe, &c. My claim accords with my specification, inasmuch as it covers precisely what I there declare to be my invention; that is, the one process or mode of constructing or sinking wells. Again, naming in the claim the three steps in the process, viz: Driving a rod, withdrawing it and inserting a pipe substantially as described. I made my claim as definite as possible, with full knowledge that Mr. Suggett had obtained a patent for an improvement in pumps, and that he had claimed the perforated pipe with the pointed end constructed as a drill and united with a pump. In my specifications and drawings, I describe and show a pile-driver, a pointed rod, and a pipe and a ring clamp, but have made no claims for either of them. I described a pipe with openings near the lower end for admission of water (this is not new), and a pointed plug inserted in the lower end suitable for driving, as my mode requires.

Apparently the general features of this pipe are similar to the pipe described and claimed in connection with a pump by Mr. Suggett.
51 Mr. Suggett's described point is constructed as a drill radically different from mine, but in harmony with his described method of putting down his improved pumps for bored wells.

But the pipe I have not claimed, for any interpretation of the word of my claim that would make it cover the pipe would also include the rod and the whole apparatus.

Drilling or boring wells to a given depth, even where rock is not encountered, may be a work of days, while by my mode a well may be sunk to the same depth, in *in* the same locality, in a few hours.

Mr. Suggett's described method accomplishes the object by regular approaches, my mode takes it by storm, and this expresses precisely the difference between boring with any ordinary drill to a given depth and driving a pointed iron or steel rod to the same depth by means of a powerful driver. With the help of one man, I have set up my driver, sunk and finished up a well twenty feet deep in two hours' time—this determines the novelty and value of my invention. I urge my claim with the utmost confidence that it is new and valuable, and that I am the original inventor of the mode I have claimed, and that it does not conflict with Mr. Suggett's rights; for permit me to say that the fact is notorious in this community, that I spent hundreds of dollars in experimenting and perfecting my tools, and in sinking several wells by the mode described in my specification, months before Mr. Suggett had anything whatever to do with bored wells, or with his improved pump; and I will state frankly that I drew my specification and claim with care and with a purpose to avoid a declaration of interference and thereby save the time and expense of a trial before the Commissioner. My claim covers all that I consider new and valuable in my mode of putting down wells. The question may arise here why I am so late in making my application; I was in the service when I made my first experiments here in Cortland, and I made them with special reference to the
52 wants of the army. I enlisted the second time, soon after Mr. Suggett obtained his patent, was commissioned adjutant of the 185th Reg't N. Y. V., participated in all the battles of that regiment; at the battle of Five Forks was grievously wounded; lay some time in the hospital, and obtained my final discharge last month, leaving me at the present time with my right arm entirely useless, and a crippled left hand. I submit this, hoping the case may be viewed in the light in which I see it. If, however, it is still thought that my claim interferes with Mr. Suggett's, may I ask that the point of interference be pointed out, and if I can save time by amending without prejudicing my rights, I will do so.

Respectfully,

BYRON MUDGE,
By REED PECK, *Ag't.*

Direct all communications to Cortland, Cortland Co., N. Y.

U. S. PATENT OFFICE,
Sept. 15th, 1865.

SIR: Your argument in the case of Byron Mudge, rejected application for patent for method of sinking wells, has been received. In reply, you are informed that in the opinion of the office Mr. Suggett, to whose patent you were referred, is not precluded by the terms of his specifications from making use of the same method of sinking wells which you claim. "Boring with any ordinary drill" is held to include "driving a pointed rod of iron or steel into the ground." In this view of the case, there is nothing to prevent Mr. Suggett from taking out a reissue of his patent with a claim covering your present one. If Mr. Suggett chooses to file a disclaimer of the particular method claimed by you, your patent can issue. Your application is again rejected.

REED PECK,
Cortland, N. Y.

CORTLAND VILLAGE,
Sept. 22, 1865.

Hon. D. C. THEAKER,
Com'r of Patents :

53 SIR : As the attorney of James Suggett, who obtained letters patent March 29, 1864, for improvement in bored wells, my attention has just been called to a letter from the Acting Commissioner of Patents, dated Sept. 15th, 1865, rejecting the application of Byron Mudge, who applies for substantially the same thing. In that letter reference is made to the letters patent to Suggett, and it is stated that Mr. Suggett "is not precluded by the terms of his specifications from making use of the same method of sinking wells which you (Mudge) desire."

The action of the office is in accordance with the truth of the case. I would also respectfully call attention to the fact, that although the specification and claim of Mudge is clothed in different language, it is substantially the same thing as Mr. Suggett's. The intent is to obtain letters patent to evade those already granted. I would also call attention to the fact that Mr. Suggett, under his letters patent, has sold to others in various parts of the United States the right acquired and granted to him. The examination of the records of your office will show the recording of a large number of deeds so given by Mr. Suggett, and to protect the honest assignees of his right, as well as his own interests, should be his first duty, and is his apology for troubling you with this letter. Mr. Mudge pretends that he is the first inventor, and that he put down wells with his method more than four years ago.

When Mr. Suggest made application for a patent, he (Mudge) then claimed that he was prior inventor, but that he did not intend to apply for a patent, in a letter of his dated Nov. 21, 1863, which he wished presented to the Commissioner of Patents. He says, "Now, I have no intention or desire to apply for a patent, if it were possible to obtain one, but am willing the public should have the benefit of my work." This letter is now in my possession, ready to be produced and filed if desired by the Patent Office. It is submitted that Mudge ought not to have an interference declared between himself and Mr. Suggett for the reasons:

54 First. That more than two years have elapsed since, by his own showing, he made his discoveries.

2nd. There has been a plain abandonment and a dedication of his right to the public under his own hand.

3d. An interference would put the parties to heavy expense, when it must be apparent that, even upon Mr. Mudge's own showing, he has waived his rights, if he ever had any. I merely desire to draw the attention of the office to some of the more prominent points of the case. Hoping and trusting that Mr. Mudge may not succeed in the effort which it is understood he is about to make to have an interference declared.

Very resp'tly, y'r obed't serv't,

R. H. DEWELL.

U. S. 25c. R. S. B. M. Sept. 30, '65. Bond. Int. Rev.

25 cents. B. M. Sept. 30, '65. Int. Rev. Bond.

I hereby make and appoint Messrs. Cochrane and Todd, of the city of New York, my attorneys to, in all respects, represent and act for me in

relation to the matter of my application for letters patent of the United States for new and improved mode of sinking and constructing wells, &c.; also to make my amendment in any petition, specification, or other document or paper connected with the above matter, and to receive the patent when granted, with authority to appoint a substitute or substitutes under them, hereby ratifying and confirming all that my said attorney, or substitute or substitutes, may lawfully do or cause to be done in the premises, hereby revoking any former power of attorney given by me in the above matter.

Dated Sept. 30th, 1865.

BYRON MUDGE.

(Filed on back :) Filed Oct. 10th, 1865. Before the Com'r of Patents. Byron Mudge to Cochrane & Todd. Power of attorney. Dated Sept. 30th, 1865.

In the matter of the application of Byron Mudge for letters patents for improved mode of sinking and constructing wells.

55 DISTRICT OF COLUMBIA,
City of Washington, ss :

Andrew J. Todd, being duly sworn, deposes and says that he has been retained by, and is one of the attorneys of the above-named applicant; that his written power of attorney was sent through the mail to said applicant for his signature, and ought to have been rec'd some two days since; that deponent supposes that the reason he has not rec'd said power is because it has been misdirected or has miscarried; and that deponent has placed in his hands all the papers in the above case, in order to act as such attorney as aforesaid.

5. Int. Rev. Oct. 30, '65 J. C. C.

ANDREW J. TODD.

Sworn to before me this 3d day of October, 1865.

T. C. CONNOLLY,
J. P.

Rec'd Oct. 3d, '65, W. R. H. I think that the within affidavit sufficiently accounts for the loss of the power of attorney. Oct. 3d, 1865.

ELISHA FOOTE,
Ex'r in Chief.

In the matter of the application of Byron Mudge for letters patent for an improved mode of sinking or constructing wells.

WASHINGTON, D. C., *Oct. 3d*, 1865.

Hon. T. C. THEAKER,
Com'r of Patents:

SIR: It is respectfully requested the above matter be reconsidered. The case on the part of the applicant not having been fully presented to your honor, and in consequence thereof was misjudged on its secondary rejection.

Yours ob't serv'ts,

COCHRANE & TODD,
Att'ys for Byron Mudge.

Filed Oc. 4th, '65.

NEW YORK, *Oct. 5th*, 1865.

Hon. T. C. THEAKER,
Com'r of Patents:

DEAR SIR: Enclosed please find our power of attorney in
56 Byron Mudge's application for letters patent for a new and improved mode of sinking or constructing wells, for the supposed loss of which power we filed an affidavit herein a few days since; subsequently it came safe to hand.

Very respectfully, yours,

COCHRANE & TODD,
Per MALCOMSON.

Filed Oct. 10th, 1865.

COOPER INSTITUTE,
City of New York, March 3d, 1866.

To the Hon. COM. OF PATENTS:

SIR: I have the honor to enclose herewith the application of Byron Mudge for a reissue of his patent for a method of sinking wells in earthy ground as contradistinguished from rock, accompanied with the old patent of Oct. 4th, '65.

Fee of thirty dollars.

New specification; thin and thick drawings. Requesting that a patent be issued to me for the process of sinking wells, as the original and first invention of the whole process.

Fully aware that a patent has issued to one James Suggett for a part of this invention claimed by me, and that my agent submitted to a partial claim. I now submit a petition for reissue of my patent under an amended specification, claiming to be the prior inventor, and asking that an interference be declared between me and the same Suggett as early as possible, and that an early day of hearing may be set, inasmuch as the parties are nearly all in the same town, and the taking of testimony will occupy but a short time. I have the honor to be, respectfully,

S. D. GALE,
Attorney for Mudge.

U. S. PATENT OFFICE, *Oct. 3d*, 1867.

SIR: In the matter of your application for reissue of your patent for well tube in interference with patent of James Suggett, and application of Nelson W. Green, appealed to the judge of the supreme
57 court of the District of Columbia, the court orders that the hearing before said court be set down for the 11th of Oct., 1867.

B. F. JAMES, *Ex'r*,
Per ELLIS SPEAR, *Ass't.*

BYRON MUDGE,
Care Arthur Holmes, Esq., Cortland, N. Y.

PORTAGE VILLAGE, N. Y., *Oct.* 18, 1867.

T. C. THEAKER,
Commissioner of Patents:

SIR: Referring to the matter of the interference between Mudge, Suggett and Green, I find myself impressed with a sense of particular obligations to you, though I was absent at the time of the hearing of the appeal to the Commissioner on account of sickness; your sense of justice has protected me, and the frankness and firmness with which

you have sustained my claim to a patent places me under lasting obligations to you. We owe to those who have protected us by just awards against injustice nothing less than gratitude. Please accept the assurance of my high esteem. It is not likely that I shall ever be in a position to show to you by any similar act how I appreciate the exercise of your official functions in my behalf and for my protection, but of your self-approval no man can rob you, and this is a reward you have richly merited. You have my best wishes and my thanks.

Very respectfully,

N. W. GREEN.

PATENT OFFICE, U. S. A., *Oct.* 21, 1867.

No. 50,614. Byron Mudge, of Cortlandville, Cortland County, State of New York. Sinking or constructing wells.

Received August 10th, 1865.
Petition " " "
Affidavit " " "
Specification " " "
Drawings " 17th, "
Model " 10th, "
Cert. dep. cash, $15, Aug. 10, 1865.
58 Addl. fee. cert.
" " cash, $20. Oct. 4, 1865.
Examined, James. Oct. 6, 1865.
Issue, T. Harland. Oct. 10, 1865.
Patented Oct. 24, 1865.
Recorded, vol. 184, page 630.
Circular. V.
Cochrane and Todd, 37 Park Row, N. Y.
August 25, '65. Reg. E.
Sept. 15, '65. Reg. E.
March 31, 1866.
Interference declared with application of S. & N. W. Green. Hearing 4th Monday, May 1866.
Improved mode of sinking wells.

TRUMAN D. COLLINS, called and sworn for the def't, and examined by Mr. WATERS, testified as follows:

Are you the defendant in this case?
I am, sir.
Where do you reside?
In East Hickory, Penna.
Did you in 1865 and 1866?
Along in December, 1865, I removed to Cortland, and resided in Cortland during 1866.
Where were these contracts made, the first ones, the ones under date of April 24th and April 28th?
In 1866, at Cortland.
Who drew them; do you remember who drew them?
I think Mr. Reed Peck wrote them.
(Papers shown witness.)
Are those the original contracts?
Yes, sir; I think they are.
(The papers referred to were here offered in evidence.)
PL'FF'S COUNSEL. We object, on the ground that it is irrelevant, im-

material and incompetent, and also that the contracts upon which this action is brought are in writing and unambiguous, and also that no evidence of what occurred prior to the making of this contract is admissible.

THE COURT. The objection is overruled.

Plaintiff's counsel duly excepted.

The contracts referred to were here read in evidence, and are as follows:

59 Whereas by an assignment by Byron Mudge, of Vineland, county of Cumberland, State of New Jersey, bearing date January 2, 1866, I, George W. Peck, of Cortland, county of Cortland, State of New York, did obtain an undivided one-fourth interest in a patent entitled a new mode of sinking wells, and bearing date October 24, 1865; and whereas by a contract dated April 24, 1866, I did agree, jointly with Byron Mudge and Preston R. Peck, to sell unto Truman D. Collins, of Cortland, Cortland County, State of New York, all the undivided one-fourth interest of the unsold territory of the above-described patent, and also an undivided one-fourth of the proceeds then in the hands of agents selling the same, the deed of which is to be given whenever called for by the said Truman D. Collins, of all the unsold territory at that time; and

Whereas said Truman D. Collins is desirous of obtaining a further interest in said patent:

Now, therefore, this indenture witnesseth, that for and in consideration of the sum of fifteen hundred dollars to me in hand paid, the receipt of which is hereby acknowledged, I agree to sell unto the said Truman D. Collins an undivided three-thirty-second (3-32) part of the proceeds of the sale of territory now in the hands of agents. Also an undivided three-thirty-second (3-32) part of the unsold territory of the above-described patent, and I further bind myself to give said Truman D. Collins a deed of an undivided three-thirty-second (3-32) part of the territory remaining unsold when such deed shall be required. Given under my hand and seal this 28th day of April, 1866.

Witness—(The words three-thirty-second were interlined before the deed was signed)—

GEORGE W. PECK.

G. W. P.
Ap'l 28, '66.

Whereas Byron Mudge, of Vineland, Cumberland County, State of New Jersey, did obtain letters patent for a new mode of sinking wells, bearing date October 24, 1865; and

60 Whereas said Byron Mudge did assign one undivided half interest in said patent on the 2d day of January, 1866, to Preston R. Peck and Geo. W. Peck, of Cortland, Cortland County, New York; and

Whereas Truman D. Collins, of Cortland, New York, is desirous of obtaining an interest therein, therefore, in consideration of the sum of four thousand dollars, the receipt of which is hereby acknowledged, we agree to sell to the said Truman D. Collins all the undivided one-fourth interest of the unsold territory of the above-described patent, also the undivided one-fourth of the proceeds now in the hands of agents selling the same, the deed of which is to be given whenever called for by the said Truman D. Collins, of the unsold territory at that time.

It is expressly understood that the said Truman D. Collins is a joint owner of the above-described patent, and subject to his share of all the expenses, and entitled to his share (that is, one-fourth) of all the proceeds derived from the same. It shall be the duty of the parties herein named to pay over to each other once in three months such balances as may be due, according to their several interests. For the true and faithful performance of which we mutually bind ourselves, our heirs, administrators, and assigns.

Dated Cortlandville, April 24, 1866.

Witness our hands and seals.

BYRON MUDGE. [SEAL.]
PRESTON PECK. [SEAL.]
GEO. W. PECK. [SEAL.]
TRUMAN D. COLLINS. [SEAL.]

Witness:
REED PECK & ABR'M MUDGE.

You say these contracts were made at Cortland?
Yes, sir.
Had you ever seen the patent of Byron Mudge at that time?
I never had.
You don't know anything about the contents of the patent?
No, sir; never mentioned to me by Mr. Peck.
Was he the man with whom you made the bargain?
He was the man who done the business.
61 What was represented to you in reference to the patent?
The patent was represented to me as being good.
(Objected to.)
The COURT. The objection is sustained.
DEF'T'S COUNSEL. We offer to show that this man at that time was satisfied, and made this contract under the representation that it was a patent for the whole process.
(Objected to.)
The COURT. I cannot allow that.
Def't's counsel duly excepted.
Did you ever see any papers transferring any right from Mr. Mudge to Mr. Peck?
I did not.
You never have seen any papers of that kind?
No, sir.
Has any deed ever been tendered to you?
No, sir; none except by letters that I rec'd from Walter Peck.
You rec'd a letter from Walter Peck?
Yes, sir.
No deed was ever tendered you?
No, sir.
What was the substance of the letter you received, or have you the letter?
No, sir.
Did you look for it?
Yes, sir.
Were you able to find it?
No, sir.
What was it in substance?
That they had got the old patent back from the office and wanted my money.

That they had got the latters patent back from the office?

Yes, sir.

Did you then go down and see them about it?

Yes, sir.

What did you learn from them in reference to their claim?

I learned from them that they had got the old patent out of the office in some way, and that they wanted me to pay them.

Did you learn whether any new reissue had been granted?

I learned there had been no new reissue granted, and I told them at that time I was ready to pay them if they would give me a warranty deed of the patent, but I could not pay them for a worthless thing, and that the paper was worthless and I could not pay them for it any more than I could pay them for a piece of land to which somebody else owned the title.

You raised the objection that they had not title?

Yes, sir; and that if they had the title, and give me a title that they could guarantee, that the money was ready for them.

62 Did they offer to show you any title?

No, sir.

Did they claim that they had any title?

No, sir; no more than that borrowed paper out of the Patent Office.

Have you ever seen that patent of Mudge's?

No, sir, I never saw it at all, and know nothing about its contents only by representations made by Mr. Peck.

Have you ever rec'd any benefit from it in any way?

No, sir; not a penny.

When you made the contract, or, by the by, was this $1,500 that was restored to you, what shape was that in?

I gave Walter Peck a note for $1,500 on the making of the original contract, and he returned that note to me.

That is all of the transfer of the $1,500 either way?

Yes, sir.

(Objected to.)

The COURT. The objection is overruled.

Pl'ff's counsel duly excepted.

There was no money paid over to them in the first place?

No, sir.

When they returned the note that was all they returned?

Yes, sir; they returned the bonds.

In relation to the $1,500 they didn't return anything but your note?

No, sir.

PL'FF'S COUNSEL. We object on the ground that the written contract cannot be contradicted by parol, and that it was prior to the writing, and the writing is the best evidence.

The COURT. The objection is overruled.

Pl'ff's counsel duly excepted.

In reference to the $2,000, how was that paid to them by you?

In 7.30 bonds.

And the same bonds were returned?

They returned what they said to be the same bonds, and I believe them to be such.

PL'FF'S COUNSEL. We make the same objection as before.

The COURT. The objection is overruled.

Pl'ff's counsel duly excepted.

That is all the money they had from you on account of the $2,000?

Yes, sir; that is all.

These were returned on the ground that they were not able to perform their contract?

(Objected to.)

63 Did you ever understand that you was to pay them anything for the letters patent being returned?

(Objected to.)

The COURT. The objection is sustained.

Def't's counsel duly excepted.

DEF'T'S COUNSEL. We offer to prove that it was understood between the parties that the words "return of the patent" referred to the return of the right which has been surrendered and not simply to the letters patent.

(Objected to.)

The COURT. The objection is sustained.

Defendant's counsel duly excepted.

Has there ever been any reissue of the patent?

Not to my knowledge; I have never known of any.

Cross-examination by Mr. CHAPMAN:

On the 6th day of July, 1866, did you not receive from Preston R. Peck and G. W. Peck $2,000 in 7-30 bonds?

I received them from them on the date of that contract.

On the 10th day of June, 1866, the day before this other agreement, you say they held your note of $1,500?

Walter Peck held my note for the original contract, but I don't remember the dates.

It was the day before this agreement was signed that he held your note for the $1,500?

I suppose he did.

On that day, the date of this contract, he handed that note back to you under this contract?

Yes, sir.

And the 7-30 bonds handed back to you were handed back under this contract?

Yes, sir; certainly.

You never have known of a reissue of the patent?

No, sir.

You never have known anything about it any way, of your own knowledge?

No, sir; not by my own knowledge.

You spoke of having received a letter from Mr. Peck; do you recollect the date of that letter?

I don't; it was in 1869, but the date of it I can't say.

You said that in that letter he notified you that he was ready to give a deed, or was the letter written before March, 1869?

I think not.

He notified you in that letter that he was ready to give you a deed?

I think it was in 1869.

64 He notified you in that letter that he was ready to give you a deed?

He said that they had got the old patent out of the office.

And that they were ready to give you a deed?

Something of that kind; yes, sir.

You don't deny but that you said to them that you didn't want it?

I said I did not want a worthless patent; that they had no title to give me.

Do you deny that you said to him that you didn't want any?
I deny saying to him only the language I speak of.
Did you say you didn't want the deed?
I didn't under that——
Didn't you write to him that you didn't want the deed?
I wrote to him I didn't want the deed, but——
Did you write that to him?
I answer you just as I wrote; I wrote to him I didn't want the deed for a worthless object. I can produce a copy of the letter I wrote him.
Did you write him that you didn't want a deed?
I wrote him that I didn't want a deed for a worthless object.
Did you write that, that you didn't want a deed?
I wrote it just as I said, and I can produce a copy of the letter, that I didn't want a deed for a worthless object.
Did you write that?
I did.
You spoke about borrowing a paper out of the office. Did you ever know a paper to be lent from a public office in your life, the Patent Office, the Surveyor General's office, or any other office?
Yes, sir; I have taken letters out of the office myself.
What office?
The prothonotary's office in Pennsylvania.
What office?
The prothonotary's office in Pennsylvania.
I mean a public office.
That is a public office.
Is it a government office?
(Objected to.)
What is your business?
I am a lumberman.
What has been your business?
I have been a lumberman for the last twenty years; I was an engineer on this railroad during the construction of it. That was in boyhood.
Is that all?
That is my general business, but I have done business of various kinds.
Have you been in the oil business?
I have done something in the oil business, but not much.
65 Didn't you make your property there?
No, sir.
A large portion of it?
No, sir.
And in a gas well?
No, sir.
Have you been interested in other business?
Never to my knowledge.
You lived at Cortland at the time of buying the interest in this patent?
Yes, sir.
And Mr. Mudge lived there?
I don't know whether he did or not at the time he got up the patent.
You knew about there being a contest between Suggett and Green?
Yes, sir; at the time I made the original contract.
You knew that Green claimed that he had the patent, and Suggett claimed that he had the patent, and Mudge claimed that he had the patent?

(Objected to as incompetent, irrelevant, and immaterial.)
The COURT. I think he may answer the question.
You knew that that was a matter of public controversy?
At the time I bought this Mr. Peck told me.
The COURT. Answer the question.
I did know it; yes, sir.
You knew about the application for a reissue under an amended specification?
I don't know much about the Patent Office business, but knew there was an application for a reissue.
Didn't you understand all that was being done there?
I don't know as I did.
Didn't you know generally what was being done in regard to that patent?
I knew that the patent or that they were trying to get a reissue of the patent at that time.
You agreed to pay your proportion of the contest then between the parties?
The contract shows what I agreed to pay.
Didn't you agree to that?
The contract shows it, sir.
You went on after these last contracts, and after the return of the patent, and went to Mudge and tried to engage for another interest from him?
No, sir; never.
Did your brother do it?
He will answer for himself.
66 He acted for you, didn't he?
No, sir; he acted for himself and I for myself.
Did he have any interest in the patent?
He had no real interest in it.
How was he acting for himself, then?
He never had any interest.
How was he acting for himself?
You can ask him; I can't tell you his business.
That is your answer to that?
Yes, sir.
Did you and he have conversations about the patent?
Yes, sir.
About the reissue and application for it?
I presume we did.
Didn't you know he was representing you in that matter?
No, sir.
You had no such understanding or idea?
I will tell you just exactly how it was.
Answer my question. Did you have any such understanding or idea that he was acting for you?
No, sir; not that he was acting for me.
You knew that he had considerable to do in connection with it?
I will explain it if you will allow me to.
Did you know that he had considerable to do in connection with it?
Yes, sir.
You know he hadn't any personal interest in it?
I will explain it to the court if you will allow me to.
Merely answer my question. Did you know that?
There is something behind that I cannot explain.

The COURT. You will have an opportunity to explain your answer.
Did you know he had no personal interest in it?
I think he had a personal interest in it?
Did he own any share in this patent?
He owned a share from me; I sold him a share.
How came you to say a little while ago that he hadn't any interest?
I said I didn't know as he had any interest from those other parties, and I said he would answer for himself.

67 When did you sell him any interest in it?
I don't remember the date.
About when?
I should judge in 1868, but I can't tell exactly when.
What part of the interest did you sell to him?
All my interest; that is, he took it in this way.
You sold your interest to him in 1868?
I think it was in 1868; that is in the way.
Your interest in the patent?
Yes, sir.
And until '68 he had no interest in it?
I can't answer that directly, because there is something I can't see into.
From the time you sold to him you had no interest in it?
I cannot say yes or no to such questions.
COURT. You say whether you owned anything in this patent from the time you sold to him or not.
If you will allow me to tell the transactions, I can tell simple transactions, and the court can decide whether I owned it. I can't answer the question yes or no.
The COURT. Then you can't tell whether you had any interest after you sold out entirely to him?
No, sir.
What was that you sold to your brother?
I told him that he might have all the interest I had in it if they could get anything out of it, and that if he could get anything out of it, it was his and he might have it, if he had any time, was any of it, and if there was any interest there he might have it and make out of it whatever he could, and that is just the way it was.
From that time on your brother went on and managed it?
He done what he had a mind to. I paid no attention to it.
About when was that?
I think it was in 1868, if I remember right, but I can't tell you the date.
That was before you received this letter?
Yes, sir.

Direct examination by Mr. WATERS resumed:

You made no papers to your brother?
No, sir; I made no papers at all.
He paid you nothing?
No, sir.

68 It was simply a verbal sale of your interest, if you had any.
Yes, sir; that I could not attend to it, and whatever I had he might have it, if I had anything at all.

On the coming of the court in the afternoon, one of the jurors being absent, it was agreed between the respective counsel that the trial should proceed with eleven jurors.

J. V. COLLINS being called and sworn for the defendant, and examined by Mr. WATERS, testified as follows:

Are you the brother of the defendant in this case?

Yes, sir.

Where do you reside?

In Oil City, Pennsylvania.

When did you first have anything to do with this patent?

In April, 1868.

What were the circumstances under which you had anything to do with the patent?

(Objected to.)

The COURT. The objection is sustained.

The COURT. It seems to me that the only question in this case is whether the patent in question was returned the same as it was before it was surrendered.

Def't's counsel here offered to prove that in 1868 this witness took up for his brother the proceedings and endeavored to procure a reissue of the right under the old patent and that he was excluded from procuring the reissue on the ground that the adjudication in the Supreme Court, in the case against Mudge, covered the whole process, and that he was not entitled to such reissue.

The COURT. The papers put in evidence show it was not the old patent or the right under the old patent that was attempted to be reissued.

DEF'T'S COUNSEL. We offer to prove that this man made a distinct application at the office to get the right that was extinguished by the surrender. That he tried to get back the patent that had been surrendered.

PL'FF'S COUNSEL. We object on the ground that this witness was not entitled to do that, or any person except the original inventor.

The COURT. You may prove that.

69 Pl'ff's counsel duly excepted.

In 1868, did your brother make any proposition to you, and if so what was it?

The proposition he made to me was, he said that the parties who had had charge of it had given it up, and that they had gone as far as their means would allow them, and that they had given it up, and that all the money that had been invested in it was lost, unless I would take hold of it and get the thing through, and the proposition was to let me have his interest if I could make anything out of it.

Did you, in the presence or in company of Mr. Mudge, go to employ an attorney, Mr. Harding, and tell them to make a reissue?

Yes, sir; I did. I came to Cortland and made an arrangement with Mr. Peck to aid them, and furnish the money to help carry the thing through.

Did you and Peck and Mr. Mudge go and call on Mr. Harding.

Yes, sir; I went to Philadelphia to see Mr. Harding.

Did you employ him to make an application for a reissue, or to obtain the right under the old patent?

Yes, sir.

Did you succeed in that?

No, sir.

Why not?

(Objected to.)

What further was there about it?

There was three different applications made in which Harding said he could get two of them through.

(Objected to.)

The COURT. That is excluded.

Confine yourself to your own knowledge.

I employed Mr. Harding and Mr. Holmes to do my business, and my information was only in regard to what they told me.

Did you ever succeed in getting a reissue or any portion of the right?

No, sir; I never was able to get anything of value.

What contract did you make with the Pecks in relation to your further proceedings?

The arrangement I made with Peck was that I was to furnish the money, and if he succeeded in getting a reissue of the patent that then what I spent upon that was to apply upon the purchase of my brother for his interest in the right.

70 Whatever you expended in your efforts to get a reissue was to apply on the monies which were in your brother's hands?

Yes, sir.

Suppose you didn't succeed in getting the reissue, what was the agreement then?

I was to lose all I put in.

Did you in pursuance of that pay out money?

Yes, sir.

Do you know how much, precisely?

No, sir; I have no account of it. I think I expended something in the neighborhood of $1,600.

(Objected to.)

The COURT. The objection is overruled.

Plaintiff's counsel duly excepted.

About what have you paid?

I can't give the time, with the exception of the first I paid out, the first two times I went to Philadelphia.

What did you pay at Philadelphia, you and Mudge?

I paid Mr. Harding $300; a retainer.

Did Mr. Mudge pay a portion of that?

Yes, sir; a trifle over one hundred dollars, Mr. Mudge paid.

Was there anything paid into the office for the application?

I think the second time I went to Philadelphia I paid $90.

Did you have it exact, or keep an account of the times, and has that been lost or destroyed?

Yes, sir; in a pass-book, and I have been unable to find that.

Do you remember what the amount you paid out footed up?

My recollection is that it was in the neighborhood of $1,600, expenses, &c.

That was all in the effort to get a reissue?

Yes, sir.

Cross-examination by Mr. CHAPMAN:

After 1868, you had the sole interest that your brother had?

I had the charge of it.

It was yours?

It was mine if I could make anything out of it.

Whatever interest there was in it was yours, after 1868?

I never owned anything. I never had the scratch of a pen for.

Did you have his interest after 1868, or not?

I represented his interest.

71 Was it yours or his?

It would have been mine if it was valid.

Whatever would have come from it would have been yours?

I expect it would.

Did you have whatever he had received from that?

He never received anything to my knowledge, and never turned anything over to me.

He never handed any papers over to you of any kind in relation to that matter?

Not to my knowledge, sir.

Did he hand over a $2,000 note to you?

No, sir.

Did you ever see a $2,000 note that your brother received in connection with this matter?

No, sir.

Did you ever know he had any?

No, sir; I never heard he had any from any parties whatever.

Did you ever talk with Byron Mudge about the $2,000 note?

Not to my knowledge, sir.

Didn't you talk with him about it when you and Byron Mudge was with the patent, and had it at Philadelphia?

I never had it at Philadelphia, and the patent never was in Philadelphia with me in the world; it was in the Patent Office; it was not out till eight months afterwards.

Will you swear you saw the original patent in the office of Mr. Holmes?

Yes, sir; and over a year after I was in Philadelphia.

Where was that?

That was in Mr. Holmes' office at Cortland.

Mr. Holmes was Mr. Mudge's attorney?

Yes, sir.

Do you know where he got it?

He said he borrowed it out of the Patent Office.

(Objected to.)

The COURT. That is not an answer to the question.

Do you know where he got it?

Only his own say so.

Did you see that patent at any time in the presence of Mr. Mudge?

That is the only time I recollect of ever seeing it in my life-time.

As you understood it, the talk with Mr. Harding was to appeal from the decision that had been made?

Mr. Harding recommended——

Wasn't that the case?

I don't know anything about it.

72 As to whether there was any application for a reissue you know nothing of your own knowledge?

If you will let me answer the question——

You can answer it if you want to.

The COURT. The witness don't seem very willing to answer the question put to him.

Do you of your own knowledge know what was done in the Patent Office, in connection with the reissue, or whether your knowledge is from what you have heard from Harding and Holmes?

Have you reference to the time I was in Philadelphia, or what?

I refer to any transaction there in the Patent Office.

There was an application made when I was in Philadelphia for a reissue.

Did you have application papers drawn up?

The papers were drawn up.

Were you present when these papers were presented to the Patent Office?

No, sir.

Then what you know about what was done there is simply what was told you by your attorney?

Yes, sir; it was what I learned from my attorney.

Was there any talk between you and Byron Mudge in regard to the $2,000 note that Byron Mudge had given your brother?

I never knew he give him a $2,000 note; not to my recollection.

(Note shown witness, dated June 2d, 1866.)

Did you ever see that note?

I don't know that I ever saw it.

Did you send it to Byron Mudge in a letter?

As I said, I don't remember ever seeing it.

Your answer is you can't tell whether you sent it to him in a letter or not?

I don't remember ever seeing it.

Can you say whether you handed it to him or not?

I have no recollection of ever seeing the note.

You were engaged in negotiating the sale of this patent right since that time?

No, sir.

Since the time when you and Mr. Mudge were in Philadelphia?

No, sir.

73 You entered in no negotiation for the sale of it?

No, sir.

You had no talk with anybody about disposing of your interest?

I talked with Peck about disposing of the interest, and wrote to Mr. Mudge making a proposition to these parties, and made negotiations with him. I saw the party in New York and talked with them.

About selling out the patents, who held these other patents?

I was talking with Mr. Andrews, in New York.

Who did he represent?

He represented Green's patent.

Were any negot'ations carried out with you in reference to the selling out the interest in this patent?

I went to see him.

Were there any negot'ations between you and him in reference to selling out the interest in this patent?

There never was any offer made by either one of us.

Were there any negot'ations?

There couldn't be any negot'ations without some offer or something of that kind, as I understand it.

Did you at any time sell out any of your interest in this patent?

No, sir; I didn't have any interest to sell out.

Did you write to Mr. Mudge asking authority from him to sell?

Yes, sir, I did—to sell his interest.

Did you write to the Pecks, asking for authority to sell their interest?

Yes, sir; the parties in New York wanted me to make a proposition?

That was the parties representing the other patent.

Yes, sir.

To buy out the rights of the parties in this patent?

No, sir; they didn't make any offer to buy out, they wanted me to make a proposition of what I would do in the matter to settle the matter and have no more litigation.

On what you would take for the patent?

Nothing was said about any amount of money.

Was there any negotiations between you and them about their buying all that interest of all those parties in this patent?

I answer we never made any arrangement.

74 Were there any negotations between you and them?

None further than they asked me to make a proposition what I would do, but I didn't make a proposition.

A proposition to sell?

A proposition to settle the matter and not have any more litigation.

Each one of these parties claimed an interest there?

What these parties?

The party that you represented and Green and Suggett?

Yes, sir; but Suggett was not spoken of.

Take Green and your patent, there was a negotiation between you in regard to it?

They asked me to make them a proposition for settlement, and not expend any more money.

When was that?

I couldn't tell you now; it must have been two years ago.

Since this suit commenced?

I couldn't tell whether since this suit was commenced or not.

(Letter shown witness dated April 12th, 1872.)

Is that your handwriting?

Yes, sir.

And both of these papers shown you?

Yes, sir.

You went down to see Mr. Harding relating to this very matter?

I think not.

You did see him?

I did not.

Did you see Mr. Andrews?

I did; I saw him in New York.

He represented Green's patent?

I suppose so.

You went down to see him in regard to the matter?

I went there on other business, and went over and did see him.

(It is admitted that this action was commenced about Oct. 10th, 1871.)

Letters refer'ed to dated April 12th, 1872, offered and read in evidence, as follows:

OLEOPOLIS, *April 12th*, 1872.

FRIEND BYRON: I was at New York and saw Mr. Andrews, that has bought an interest with Green, and he wanted me to make a proposition for a compromise or to sell. I told him I was ready to receive propositions, but would not make any until I consulted with other

75 owners. I also saw the Pecks, and they told me to make any arrangement I was a mind to (as far as they were concerned) and they would give me a commission of 50 per cent. for selling. Write me on receipt of this and let me know if you will do the same, and if I shall go on and make such arrangements or sell, as I think best.

Very respectfully, yours,

J. V. COLLINS.

(It is admitted that the date of the first answer in this case is the 24th day of June, 1872.)

Did you yourself go to the Patent-Office in connection with this matter?

No, sir; I never went there myself.

You never went there to ask for a return of the original patent yourself?

No, sir.

Direct examination resumed by Mr. WATERS:

Did you receive an answer from Mr. Mudge to that letter?

Yes, sir.

Have you that answer with you?

I think I have.

The witness here produced a letter purporting to be answer to the letter in question, dated Philadelphia, April 17th, 1872.

The letter referred to was here offered and read in evidence as follows:

PHILADELPHIA, *April 17th*, 1872.

J. V. COLLINS:

DEAR SIR: Yours of the 12th inst. was received in due time. I have thought for some time that Green was getting sick of his bargain. I would be glad to buy or compromise so as to have the control of the patent without fear or favor. I will be frank with you and say that I feel very much disappointed in the way you have managed the matter. It was agreed by you when the last arrangement was made that you was to push the sale of the patent, or the collection of royalties, at once, and make all that you could for the parties interested. I have kept looking and hoping to see, hear, or receive something as the result of your action, but I fear you have been too much absorbed with other matters, and have left this to take care of itself.

76 I am too poor to throw this away without at least making an effort to realize something from it. I am crippled in body and in health, and have only my hands to earn my bread for myself and family, while Mr. Peck and others interested have plenty to make them comfortable. I have been sick so much, and as a consequence absent from business, that I have been obliged to trust to others, and have lost heavily on that account. If I should sell out now I would not have enough to pay my debts.

How I am going to get along the Lord only knows. I want something done, and as to selling to Andrews, or Green, or any other parties, you have my consent to sell on condition that I receive $3,000 for my interest. You may drive the best bargain you can, but I want and feel that I must have that amount for it. I know if you will take the work in hand that you can make a much larger amount than that from my share alone. I have written to you twice and have not received any answer. When I tell you that I fear I will have to give up my business here on account of my health, you will not wonder that I am anxious that something should be done and some money made from the patent. Now, friend Collins, put your shoulder to the work and make a good thing out of it, as I know you can. Please let me hear from you often how the work goes on.

Yours, respectfully,

B. MUDGE.

As to collecting royalties, what was there about that?

(Objected to.)

DEF'T'S COUNSEL. We offer to prove that he made an examination, and found that no royalties could be collected.

The COURT. I cannot allow that to be proved.

Defendant's counsel duly excepted.

Did you make any contract with Mudge?

(Objected to as irrelevant, incompetent, and immaterial.)

The COURT. The objection is sustained.

77 Cross-examination by Mr. CHAPMAN:

Did I understand you to say that you hadn't now the items of what you paid out?

No, sir.

All there is about this is, you are lumping the amount that you did pay out?

Yes, sir; my recollection is that I paid out $1,600.

Did that include the $300 retainer?

Yes, sir; certainly it included my proportion of that, which was only $200.

You say that you went on and paid out this money under an arrangement with the Pecks?

Yes, sir; with the Pecks and others, or with another.

Who made the agreement by which you was to get back from them the money which you paid out?

All the talk I had was with Mr. Reed Peck in Cortland.

When was it?

The first time I saw him in Cortland on this business was about in the month of April, 1868.

What interest did you control at the time you was paying out this money?

None further than I had my brother's; and I had Mr. Mudge's afterwards. I made an arrangement with Mudge to furnish all the money for his part that was used.

A portion of the $1,600 was for Mr. Mudge?

Yes. sir.

How much was for him, or did he have a half interest?

No, sir; he did not have a half interest, I think not at that time.

Do you know how much he had?

My recollection is that he had only a fourth; that is what he claimed to me that he had.

One-fourth of the $1,600 then belonged to him to pay?

I paid it.

He was to pay you, was he not?

He gave me one-half of his interest.

Then he gave you one-half of his interest for what you expended?

He was to give me that if I succeeded in getting a reissue.

You didn't succeed in getting a reissue?

No, sir.

So he didn't give you anything?

No, sir.

78 The Pecks were to give you this in case you got a reissue?

It was in case I succeeded in getting a reissue that was to apply on the purchase money of my brother's.

In case you did not succeed, then it was not to apply?

Yes, sir; it was a failure, and I lost it.

If you didn't succeed in getting a reissue it was not to apply?

That is the way I understood it.

You didn't succeed in getting a reissue, as far as you know?
No, sir; I did not.
That is so?
Yes, sir.
Were you ever arrested?
Yes, sir.
Where?
At Syracuse.
What for?
Upon a claim; I was arrested with a supreme writ, or under a supreme writ.
Arrested for fraud?
They claimed it to be fraud. It was not a fraud, but was claimed to be a fraud, and that was the only time I was ever arrested, sir.

Defendant's counsel next offered in evidence letters patent granted to James Suggett, first under date of the 29th day of March, 1864; also subsequent letters under date of the 6th day of February, 1866.

PLAINTIFF'S COUNSEL. We object to each of those letters patent as incompetent, irrelevant, and immaterial.

The COURT. The objection is sustained.

Def't's counsel duly excepted.

DEF'T'S COUNSEL. I first offer the one of 1864.

The COURT. I reject them both jointly and separately.

Def't's counsel duly excepted.

The letters rejected are attached to this case, and marked Exhibits Y and Z, respectively.

GEORGE PECK, recalled and examined by Mr. WATERS, testified as follows:

When did you make any contract with Mudge for rights under this patent—any more than once?
No, sir.
When did you make any such contract?
I have not the contract with me; I cannot give the exact date, but we made a verbal agreement on the street; we never had any written bargain, I think; but after he procured his patent he gave us a deed of what he had agreed to give us.
79
When was your deed given?
I can't tell you.
(Paper shown to witness.)
Is this the deed, dated the 2nd of January, 1866?
I should say that that is the deed. I never saw it but once before in my life.
You took it, didn't you?
It has always been in my father's custody.
Where is the contract between you and your brother, or is this the only writing you have from Mr. Mudge?
I believe it is; my lawyers have had custody of all such writings as that.
Was there any reissue of this patent obtained after you knew anything about it?
I never knew of any; I suppose you mean by that a copy of letters patent, that we must have received from the office.
There was a surrender and application for a reissue?
Yes, sir.

Was there any reissue at all of any description that you knew anything about?

No, sir.

Or any application?

No, sir, I believe not; we had our patent returned to us.

Did you ever see it?

Yes, sir; three or four days after Holmes received it; he told me it was three or four days afterwards. That was in the first half of the month of December, 1869. Holmes said he had had it three or four days then.

Was that the first time you ever had seen it?

Yes, sir; I saw it before it was surrendered.

It was the same old letters patent?

Yes, sir; it appeared to be.

Do you know where that is?

I never heard of its being taken out of the office of Mr. Holmes since that time, and never knew of its being out of his possession.

Cross-examination by Mr. CHAPMAN:

Mr. Holmes lives at Cortland?

I think not at present. He used to at this time.

80 He is a lawyer there?

Yes, sir; he was then.

You didn't notice any changes in the original letters—they were the same as before put in the Patent Office?

They appeared to be.

So far as the papers are concerned, the assignment to you and your brother of Mr. Mudge, and in fact all the papers have been left with your father?

Yes, sir; he has had the custody of them generally.

You went off to Texas?

Yes, sir; I went there in March in 1869.

Direct examination by Mr. WATERS:

You left the business with your father?

I can't say just what authority he had to transact business in my name.

Did he have any?

I don't know that he ever had my signature to a power of attorney.

Do you know whether you left any authority with him to do business for you, or did he do the business for you that you approved of?

He did a great deal of business for me all during the time that I approved of, and he did some business without any authority, business for me without any special authority, that I ratified afterwards.

You have testified to all the interests you have got, and all the contracts you have, giving any interest in this patent?

I guess so.

Defendant rests.

TRUMAN D. COLLINS, recalled and examined by Mr. CHAPMAN, testified as follows:

Have you ever demanded or required a deed of Mudge?

No, sir; all the demand I ever made, I told him that their money was ready whenever they would give me a warranty deed.

(Note shown witness.)

Did you ever have that note of June 2d, 1866?

I don't remember of ever seeing that before.

It is signed by Byron Mudge?

Yes, sir; but I don't remember of ever seeing it before.

81 Do you say you didn't see that before?

I don't remember of ever seeing it; I have never seen that note in the world, sir.

BYRON MUDGE, being recalled and examined by Mr. CHAPMAN, testified as follows:

Look at the paper dated June 2, 1866, and say whether you ever saw it before.

Yes, sir.

Where did you get it?

(Objected to on the ground that it was irrelevant, incompetent and immaterial.)

The COURT. I don't think that it is material in this case.

Plaintiff's counsel duly excepted.

PL'FF'S COUNSEL. We offer to prove by this witness that he received a note from Mr. Mudge, dated June 6, 1866.

DEF'T'S COUNSEL. We object, on the ground that it is incompetent, irrelevant and immaterial.

The COURT. The objection is sustained.

Plaintiff's counsel duly excepted.

Did you know before these contracts were signed that Mr. Collins, or know about this patent of Green and the Suggett patent?

(Objected to.)

The COURT. The defendant himself has sworn to that, and I don't see how these things are material in this case.

Direct examination by Mr. WATERS:

It seems that this patent was not returned until December, 1869. On reflection, do you say it was not in Philadelphia in 1868 when Collins was there?

My recollection is as I stated this morning in regard to it—that it was there in 1868.

Do you swear to that now?

Yes, sir; to the best of my recollection.

They were there in 1868?

Yes, sir; I think I saw the patent there; I am very positive.

Will you swear positively on that point?

I swear that it is the best of my recollection.

That is as strong as you will put it?

Yes, sir.

You don't know where it is now?

I have only the word of my attorney, Mr. Holmes; of my own knowledge, I don't know.

82 Cross-examination:

Was it in 1868 or 1869 that Collins saw it?

I can't say when he saw it; J. V. Collins saw it.

When there was a talk about giving up this note?

No, sir; not that time.

That was after the proceedings were all closed and the original patent had been taken out of the office?

That the note was surrendered. Yes, sir.

As it was returned to you or your attorney, as you saw it there, was

it cancelled or altered from the original patent, or was it the original patent?

(Objected to, on the ground that the surrender of the patent is in judgment of law a legal cancellation of the patent.)

The COURT. The objection is overruled.

Defendant's counsel duly excepted.

I have no recollection of seeing anything on the patent that would go to show me that it was cancelled in any way whatever.

Direct examination by Mr. WATERS:

Was there a reissue ever obtained?

The COURT. There is no pretension that any reissue was ever obtained.

REED PECK, being called and examined by Mr. CHAPMAN, testified as follows:

When you saw the patent, was it as it was originally—was it changed or altered in any way from the original patent?

(Objected to, on the ground that it is incompetent, immaterial and irrelevant.)

The COURT. The objection is overruled.

Defendant's counsel duly excepted.

It was not.

Plaintiff's counsel here offered in evidence a decision of the Examiner-in-Chief of the Patent Office in case of Mudge.

The COURT. The decision is not evidence.

(Defendant's counsel objected on the ground that it is not properly authenticated, and that the record show that this decision has been reversed.)

83 The COURT. I do not think it is of any importance in this case as long as it is conceded in fact no re-issue was granted.

Evidence closed.

DEF'T'S COUNSEL. We ask the court to non-suit the plaintiff on the following grounds:

First. That the proof fails to show that Byron Mudge ever obtained the patent referred to in the written contracts read in evidence, as the plaintiff has failed to produce the original letters patent, and failed to prove their contents.

Second. The proof fails to show that the plaintiff did ever have any title to any part or portion of the right granted by the letters patent, whatever it was.

Third. That the proof shows that the patent was surrendered before the 24th day of April, 1866, and therefore in judgment of law it was extinguished before the making of the contracts, and at the time when the plaintiff and his assignor, or either of them, contracted to deed, they had no interest. The surrender of the patent was a legal cancellation of it, and no right can be asserted on it afterwards.

Fourth. That the proof now shows an interference declared at the request of the parties with the patents granted to James Suggett, and the claim on application of N. W. Green covering the whole invention, a regular trial, and the final decision of the United States Supreme Court awarding priority for the whole invention to James Suggett, as between Suggett and Mudge, and granting a patent to N. W. Green for the whole invention.

Fifth. That the agreement upon which the action is based under date

of June 11, 1866, and July 6, are void for lack of consideration and mutuality; plaintiff not being bound to fulfill except at his own option, and the money passed between the parties being the defendant's money, and returned to him as his because of the inability of the plaintiff to perform his previous contracts.

Sixth. The plaintiff fails to show tender or performance, or ability to perform on his part.

84 The COURT. I am satisfied that I must dispose of this case one way or the other. I must order a verdict for the plaintiff, or nonsuit the plaintiff on the grounds suggested, because there is no question of fact for the jury. I am inclined to think, however, that I ought to nonsuit the plaintiff for the reason that the surrender of this patent by the patentee operated as an extinguishment of that patent. That certainly is within the reasoning of Judge Nelson in the case in Black's Reports, although that case is not precisely in point and in accordance with the apparent and real intent of the parties when a surrender is made, and if such surrender does not absolutely and unqualifiedly extinguish the patent, and it seems to me that there should be some act of the department indicating an intention to send that patent back into the world as a valid patent. There should be a definite act of the department indicating an intention that it should remain in force still having life and vitality. Motion for non-suit granted.

Pl'ff's counsel duly excepts.

J. B. Kirkhuff.

GEORGE W. PECK *ag'st* TRUMAN COLLINS.

M. M. Waters.

Jury.

1. C. Winans,
2. Robert Byers,
3. John W. Young,
4. William Finch,
5. Daniel Lockwood,
6. William Stoughton,
7. Richard Mower,
8. William O. Nash,
9. Charles Rogers,
10. Israel Chauncey,
11. John E. Johnson,
12. George R. Eldredge.

Plaintiff's witnesses.

1. Preston R. Peck,
2. Byron Mudge,
3. George W. Peck,
4. Reed Peck.

Defendant's witnesses.

1. Truman D. Collins,
2. J. B. Collins.

85 Court adjourned till 2 p. m.

Court opened at 2 p. m.

Here the evidenced closed, and after argument by counsel, it is ordered that the plaintiff be non-suited, and the jury discharged.

R. RUSSELL, *Clerk.*

GEORGE W. PECK *ag'st* TRUMAN D. COLLINS.

On motion of B. J. Kirkhuff, attorney for the plaintiff, the attorney

for the defendant consenting thereto, it is ordered, that all proceedings in this action on the part of the defendant be stayed ninety days, to enable the plaintiff to make a case and exceptions, or a bill of exceptions, as he shall elect, to be heard in the first instance at a special term, and that the defendant may have a like time to propose amendments thereto, and if a case or bill of exceptions be made, then all proceedings shall be stayed until a final hearing and determination of this case at special term.

Dec. 5.

P. RUSSELL, *Clerk.*

(The foregoing order granted and entered at the circuit at which the case was tried.)

At a special term of the supreme court, held at the court-house in the city of Binghamton, in and for the county of Broome, on the 12th day of January, 1875.

Present, Ransom Balcolm, justice supreme court, Broome County.

GEORGE W. PECK
ag'st
TRUMAN D. COLLINS.

On reading and filing the annexed consent of J. B. Kirkhuff, ordered, that A. D. Wales, attorney, of Binghamton, New York, be substituted as the attorney and counsel for the plaintiff in the above entitled action.

R. BALCOM,
Justice of the Supreme Court.

86 At a special term of the supreme court held in and for the county of Broome, at the court-house in the city of Binghamton, in said county, on the 24th day of February, 1875.

Present, Ransom Balcom, justice.

GEORGE W. PECK
ag'st
TRUMAN D. COLLINS.

On reading and filing the affidavit of A. D. Wales, hereto annexed, and on motion of said A. D. Wales, attorney for the plaintiff herein, ordered that the time to make a case and exceptions or bill of exceptions granted to the plaintiff herein at the November Broome County circuit of this court for the year 1874, by an order granted by the Hon. Douglass Boardman, and entered with the clerk of the county of Broome on or about December 5, 1874, be, and the same is hereby, extended thirty days from the expiration of the time granted by said order, and that the plaintiff have thirty days' additional time to make and serve a case and exceptions or bill of exceptions herein, and it is further ordered that all proceedings on the part of the defendant in the mean time be stayed.

RANSOM BALCOM,
Justice of the Supreme Court.

(Endorsed:)

Due service of the within order on this 24th of February, 1875, is hereby admitted.

M. M. WATERS,
Defendant's Attorney.

A. D. Wales, att'y for pl'ff, Binghamton, N. Y.; M. M. Waters, att'y for def't, Cortland, N. Y.

EXHIBIT Y.

No. 52463.

The United States of America to all to whom these letters patent shall come:

87 Whereas James Suggett, of Cortland, New York, has alleged that he has invented a new and useful improvement in mode of sinking wells, which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of said improvement, and that the same hath not to the best of his knowledge and belief been previously known or used; has paid unto the Treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose: These are, therefore, to grant according to law to the said James Suggett, his heirs, administrators or assigns, for the term of seventeen years from the 6th day of February, 1866, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the work of the said James Suggett in the schedule hereunto annexed and is made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand at the city of Washington this sixth day of February, in the year of our Lord one thousand eight hundred and sixty-six, and of the Independence of the United States of America the ninetieth.

W. T. OTTO,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.
[SEAL.]
T. C. THEAKER,
Commissioner of Patents.

The schedule referred to in these letters patent and making part of the same.

88 To all whom it may concern:

Be it known that I, James Suggett, of Cortland County, of Cortland and State of New York, have invented a new improved mode and apparatus for sinking wells, and I do hereby declare that the following is a full, clear, and exact description of the construction and operation of the same, reference being had to the annexed drawings, making a part of the specification, in which figure one (1) represents the apparatus complete; figure two (2) the various parts of which it is made up; figure three (3) tongs used to loosen the pipe while driving, and figure four (4) a clamp ring used in connection with a chain in withdrawing the pipe. The method now in use and substantially described by me in my specification annexed to letters patent granted me March

29, 1864, is first to drive down a bar or drill, then withdrawing the drill, and inserting a pipe in the place through which the water is drawn. The withdrawing the drill is often the most difficult part of making a well; to avoid the difficulty I so strengthen and arm the pipe that it may itself be driven down, dispensing of the use of any separate bar or drill. I use a pointed barrel or pipe (*a*) with openings at or near the point (*bb*), and also with a thread cut upon the upper end upon which I screw a cap or armor piece (*c*), the end of the pipe fitting against a shoulder (*H*), at the bottom of the screw in the armor piece. This piece is made solid and strong to bear the blow it must receive in driving down the pipe, in order to strengthen the pipe to prevent it bending latterly, and at the same time to prevent the entrance of dirt into the pipe through the openings (*bb*) in its passages through the ground. I fill the pipe (*a*) with a solid rod (*g*) of about the same length with the pipe. When the pipe is driven to the required depth the armor piece is unscrewed and removed, the rod (*G*) drawn out, and any pump may, by means of a proper coupling, be attached to the pipe, and a complete well is formed. What I claim and desire to secure by letters patent is the armor cap (*c*) with shoulder (*H*) and thimble (*D*), for the pur-
89 pose described; second, in combination with cap (*C*), thimble (*D*), and shoulder (*H*), I claim the pump-tube (*a*) for the purpose of driving the said tube directly into the earth substantially as set forth. I don't intend, by anything herein contained, to disclaim the using a bar or drill in putting down wells (when desired), as set forth in my specification in the patent granted me March 29, 1864.

JAMES SUGGETT.

Witnesses:
R. H. DUELL.
CHAS. FOSTER.

EXHIBIT Z.

No. 42126.

The United States of America to all to whom these letters patent shall come:

Whereas James Suggett, of Cortland, New York, has alleged that he has invented a new and useful improvement in pumps for bored wells, which he states has not been known or used before his application; has made oath that he is a citizen of United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvement; and that the same hath not to the best of his knowledge or belief been previously known or used; has paid unto the Treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissioner of Patents signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose. These are therefore to grant, according to law, to the said James Suggett, his heirs, administrators, or assigns, for the term of seventeen years from the 29th day of March, 1864, the full and exclusive right and liberty of making, constructing, using and vending to others to be used the said improvement, a description whereof is given in the mode of the said James Suggett in the schedule hereunto annexed, and is made a part of these presents.
90 In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand at the city of Washington, this 29th day of March, in the year of our Lord 1864, and of the Independence of the United States of America the eighty-eighth.

J. P. USHER,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.
[SEAL.] D. P. HALLOWAY,
Commissioner of Patents.

The schedule referred to in these letters patent and making part of the same:

To all whom it may concern:

Be it known that I, James Suggett, of Cortland, in the county of Cortland and State of New York, have invented a new and improved method of putting down and operating bored wells, and I do hereby declare that the following is an exact and full description thereof, reference being had to the accompanying drawing and the letters of reference marked thereon. My method of putting down a well is as follows, viz: I first bore with an ordinary drill of the same or larger size than the pipe to be used for drawing the water to the desired depth. This drill is then entirely withdrawn. I then prepare an iron pipe (*aa*), which may be lengthened as desired by adding pieces connecting them by means of the collar (*D*), with which they are tightly screwed; the lower end of the pipe is perforated with holes (*ccc*) for a space of one or two feet, to allow water to freely flow in. In the end of this pipe is fitted and riveted a conical point (*P*); the perforated portion of the pipe may be filled with old rope or rags to prevent the dirt sifting in in the passage through the dirt, such rope to be drawn up through the pipe after it is put down. The pipe thus prepared is driven down in the hole prepared by the drill, and pieces added as it is forced down until the
91 perforated portion reaches water. Any desired pump is then screwed or soldered on the upper end of the pipe. After a slight pumping the loose dirt above the hole (*cc*) is drawn off, and a perfect well thus formed. By the old method pipe was forced down with the drill to the desired point. The drill was then drawn up inside the pipe, leaving the pipe to act as a wall or curb for the well, and the suction or draw pipe was then passed down inside the first pipe, and great difficulty in this method was experienced in forcing down the first pipe, and must be always larger than the drill to admit of the drill being drawn out inside the pipe, and reduces the pipe in size as much as possible; it was necessary to use thin and consequently weak pipe, and which would not bear driving; whereas in my method, the drill being first put down alone, it can be used as large or larger than the pipe, thus removing all obstructions, while the pipe, which is to be put down after the drill is taken out, may be made of any desired thickness, and of strength sufficient when armed with the sharpened point (*B*) to bear all necessary driving; and my method dispensing with one pipe, my pipe answering for both curb to the well and suction or draw pipe. What I claim as my invention, and desire to secure by letters patent, is the perforated pipe (*a*), with pointed end (*B*), constructed as a drill and united with a pump, all substantially as shown and described.

JAMES SUGGETT.

Witnesses:
CHAS. FOSTER.
H. S. COLLINS.

By consent of counsel let the foregoing be filed as the case and exceptions as settled in this action.

D. BOARDMAN,
Justice Supreme Court.

Filed June 18, 1875.

P. A. RUSSELL,
Clerk.

(Endorsed:) Jan. 31, 1876. Motion for a new trial denied, with costs. D. L. F.

92 Supreme court, Broome County.

REED PECK, AS ADMINISTRATOR OF THE estate of Walter Peck, deceased,
against
TRUMAN D. COLLINS.

Please take notice that the annexed is a true copy of an order duly granted by the special term of the supreme court held at the court-house in the city of Binghamton, in for the county of Broome, on the 9th day of November, 1875, and duly entered on said day by the clerk of said court.

Dated Binghamton, Nov. 11, 1875.

A. D. WALES,
Plff's Attorney.

To M. M. WATERS,
Def't's Attorney.

Supreme court, Broome County.

At a special term of the supreme court, held at the court-house in the city of Binghamton, in and for the county of Broome, on the ninth day of November, 1875.

Present, Hon. Wm. Murray, justice.

In the matter of the petition of Reed Peck, as administrator of Walter Peck, deceased, to have continued an action heretofore pending in this court between said Walter Peck, as plaintiff, and Truman D. Collins, defendant.

On reading and filing the petition of Reed Peck, as administrator of the estate of Walter Peck, deceased, dated the 26th day of October, 1875, and on proof of due service of notice of this motion, and on motion of A. D. Wales, counsel for said deceased plaintiff, and for said administrator, no one appearing in opposition thereto, ordered that the said action of Walter Peck against Truman D. Collins, heretofore pending in this court, be and the same is hereby continued in the name
93 of said Reed Peck, as administrator of the estate of said Walter Peck, deceased, as plaintiff, and that the said administrator be and he is hereby substituted as plaintiff in the place and stead of said Walter Peck, deceased, and that such revivor and continuance be without prejudice to any of the proceedings already had in said action.

A true copy.

J. H. JOHNSON,
Deputy Clerk.

At a special term of the supreme court of the State of New York, held at the court-house in the village of Ithaca, Tompkins County, on the 7th day of December, 1875.

Present, Hon. David L. Follett, justice.

Supreme court.

REED PECK, AS ADMINISTRATOR OF THE estate of Geo. W. Peck, deceased,
against
TRUMAN D. COLLINS.

A motion for a new trial having been made on the part of the plaintiff on the case and exceptions, and the decision of motion having been made and filed, whereby said motion for a new trial is in all things denied, with costs, now, on motion of M. M. Waters, attorney for defendant, ordered, that the said motion for a new trial be and the same is hereby denied, with costs.

Filed in Broome County clerk's office, February 3d, 1876.

Judgment.—Feb. 28, '76.

Supreme court, Broome County.

REED PECK, AS ADMINISTRATOR OF THE estate of Geo. W. Peck, deceased,
against
TRUMAN D. COLLINS.

This action having been at issue upon the pleadings, and having been reached in its order on the calendar, and having been brought to
94 trial before Hon. Douglass Bordman, one of the justices of this court, and a jury, at a term of this court held in the city of Binghamton, Broome County, N. Y., on the 25th day of November, 1874, and the court having non-suited the plaintiff and a stay of proceedings having been granted, and a case and exceptions having been made and served on the part of the plaintiff, and the original plaintiff, George W. Peck, having died, and Reed Peck having been substituted as plaintiff herein by order of this court, bearing date November 9, 1875, and plaintiff's motion for a new trial having been argued at a special term of this court held at Ithaca, N. Y., on the 7th day of December, 1875, and the decision of the court having been made and filed whereby the motion for a new trial is in all things denied, with costs, and the costs having been duly taxed at two hundred and forty dollars, now, on motion of M. M. Waters, attorney and counsel for the defendant, it is adjudged and ordered that the motion for a new trial be and the same hereby is in all things denied, with costs, and that the defendant recover of the plaintiff the sum of two hundred and forty dollars costs and disbursements of this action, and that defendant have execution therefor.

Filed Feb. 28th, 1876.

P. A. RUSSELL,
Clerk.

At a circuit court and special term of the supreme court of the State

of New York, held at the court-house in the village of Norwich, in the county of Chenango, on the 19th day of May, 1873.

Present, Hon. D. Boardman, justice.

GEORGE W. PECK
ag'st
TRUMAN D. COLLINS.

On filing stipulation of the attorneys for the parties, and on motion of J. B. Kirkhuff, plaintiff's attorney, ordered, that the venue in this action be changed from the county of Chenango to the county of Broome.

A. SHEPARDSON,
Clerk of Chenango County.

95 *Notice of appeal.*

Supreme court, Broome County.

REED PECK, AS ADMINISTRATOR OF THE estate of George W. Peck, deceased,
against
TRUMAN D. COLLINS.

Please to take notice that the plaintiff in the above entitled action appeals to the general term of this court from the judgment entered herein in favor of the defendant and against the plaintiff in the office of the clerk of Broome County, on the 28th day of February, 1876, for the sum of two hundred and forty dollars, costs and disbursements; and the said plaintiff also appeals to said general term from the order and determination of the special term of this court herein denying the plaintiff's motion for a new trial made on case and exceptions, which said order was entered in the office of the clerk of the county of Broome on the 3d day of February, 1876, and from each and every part of such judgment, order, and determination.

Dated Feb. 29, 1876.

Yours, &c.,

A. D. WALES,
Plaintiff's Attorny.

To M. M. WATERS, esq.,
Defendant's Attorney, and
P. A. RUSSELL,
Clerk of the County of Broome.

Filed Feb. 29, 1876.

BROOME COUNTY,
Clerk's Office, ss:

I certify that I have compared the foregoing copy of the notice of appeal and judgment roll with the original now on file in my office, and that they are correct transcripts therefrom and the whole of said originals.

In testimony whereof I have hereunto subscribed my name and affixed my seal this 20th day of March, 1876.

[SEAL.] P. A. RUSSELL, *Clerk.*

96 At a general term of the supreme court of the State of New

York, held in and for the third judicial department of said State, at the town hall in the village of Saratoga, on the 21st day of September, A. D. 1876.

Present, Hon. William L. Learned, presiding justice; Hon. Douglass Boardman, Hon. Augustus Bockes, associate justices.

REED PECK, AS ADMINISTRATOR,
ag'st
TRUMAN D. COLLINS.

Judgment and order affirmed with costs.
Opinion by Learned, P. J., Boardman, J., not acting.
A copy.

JAMES W. HORTON,
Clerk.

97 Supreme court, Broome County.

REED PECK, AS ADMINISTRATOR OF THE estate of George W. Peck, deceased,
ag'st
TRUMAN D. COLLINS.

The appeal of the plaintiff from the judgment of the special term, entered in the above-entitled action, on the 28th day of February, 1876, in the clerk's office of Broome County, N. Y., having been brought to a hearing at general term, having been made & filed, whereby said judgment of the special term is in all things affirmed with costs, & the costs of general term having been taxed at $70.42: Now, on motion of M. M. Waters, att'y for defendant, it is ordered & adjudged that the judgment of the special term be, and the same hereby is, in all things affirmed, and that the defendant & respondent, Truman D. Collins, recover of the plaintiff & appellant $70.42, the costs of this appeal, & that defendant have execution therefor.

P. A. RUSSELL, *Clerk.*

98 Supreme court.

REED PECK, AS ADMINISTRATOR OF THE estate of George W. Peck, deceased,
ag'st
TRUMAN D. COLLINS.

Please to take notice, that the plaintiff in the above-entitled action appeals to the court of appeals from the judgment entered in favor of the defendant, rendered by the court at a general term thereof, held in and for the third judicial department, in the above-entitled action, commenced in said court and entered in the office of the clerk of Broome County on the 27th day of October, 1876, affirming the judgment of the special term with costs of the appeal, amounting to the sum of $70.42; and the said plaintiff also appeals to the said court of appeals from the order and determination of the said general term, made at the village of Saratoga, on the 21st day of September, 1876, and filed in the office of the clerk of the county of Broome, on the 17th day of October, 1876, affirming the judgment and order of the special term herein, denying the plaintiff's motion for a new trial made on case and exceptions,

and from each and every part of such order, judgment, and determination.

Dated November 15th, 1876.

Yours, &c.,

A. D. WALES,
Pl'ff's Att'y.

To M. M. WATERS, Esq.,
Defendant's Attorney, and
P. A. RUSSELL,
County Clerk of Broome County.

Filed Nov. 20th, 1876.

99 STATE OF NEW YORK,
Broome County Clerk's Office, ss:

I, Pliny A. Russell, clerk of said county, and clerk of the county and supreme court, held in and for said county, do hereby certify that I have compared the foregoing copy of the notice of appeal to the court of appeals and of the judgment-roll with the originals now on file in my office, and that the same is a correct and true copy of said originals and the whole of said originals.

In testimony whereof I have hereunto subscribed my name and affixed my seal this 1st day of Dec., 1876.

[SEAL.] P. A. RUSSELL, *Clerk.*

100 Court of appeals.

REED PECK, ADM'R OF THE ESTATE OF GEO. W. Peck, deceased, app'l't,
ag'st
TRUMAN D. COLLINS, RESP'T.

CHURCH, *Ch. J.:*

By two contracts, bearing date respectively April 24th & April 28th, 1866, the defendant agreed to purchase certain interests in a patent-right for sinking wells patented by one Mudge. By the first contract one-fourth of the unsold territory & proceeds of territory sold were agreed to be purchased, & by the last an additional interest of three thirty-second parts. The vendors in the first contract were the plaintiff's intestate, Rusten Peck, & Mudge, and in the last the plaintiff's intestate & the vendors agreed to convey the interests sold by deed upon demand.

101 Upon the first contract $2,000, part of the consideration, was paid in 7.30 bonds, and the defendant gave his note for $1,500, the whole consideration in the last contract.

The action is brought upon two contracts, subsequently made, bearing date respectively June 11 & July 6th, 1866. The first was between the defendant & the plaintiff's intestate, & after reciting the making of the contract of the 28th of April, above referred to, contained this recital: "And whereas said contract was given after the letters patent had been surrendered up for a reissue, and in ignorance of the fact that under certain circumstances the letters patent would not be returned to the owners of said patent; and whereas the said Peck desires a release from his obligations under said contract, in case he should not be enabled to fulfill such obligations." It was then agreed, in consideration of the return of the $1,500 to the defendant, that Peck should be released

102 from his obligations, & the defendant agreed to pay certain expenses attending the application for a reissue, and to pay to Peck $1,500 "when the said Peck shall notify him of his readiness to fulfill the said contract, by deeding to said Collins his interest in said patent, or any reissue which may be granted under said application." The other contract was in the form of a receipt signed by the defendant, & after acknowledging the receipt of $2,000 in 7.30 bonds, it was agreed that the bonds should be returned to the Pecks "as soon as Byron Mudge succeeds in getting a reissue of a patent for putting down wells, now in the Patent Office, or providing the old patent is returned."

There was a controversy in respect to priority of invention between Mudge & one Suggett, who had obtained two patents, one prior & one subsequent to Mudge, & one Green, who was applying for a pat-
103 ent, and after the application of Mudge for a reissue interference, proceedings were instituted under the patent laws at the instance of Mudge against Suggett, & by Green against both Mudge & Suggitt. These proceedings are authorized by § 4904 U. S. R. S., which provides that "whenever an application is made for a patent (and an application for a reissue is the same thing) which, in the opinion of the Commissioner, would interfere with any pending application or with any unexpired patent, he shall give notice thereof to the applicant or patentee, as the case may be, and shall direct the primary examiner to proceed to determine the question of priority of invention, and the Commissioner may issue a patent to the party who is adjudged the prior inventor" unless an appeal is taken as provided by the act. Three successive appeals are allowed by statute in these proceedings from the decision of the primary examiner to the chief examiners, from their decision
104 to the Commissioner, & from his decision to the supreme court of the District of Columbia, §§ 4909, 4910, 4911.

All the parties interested, Mudge, Suggitt, & Green, appeared & litigated the question fully before the primary examiner, & upon appeal before each of the appellate tribunals, of the four tribunals, three decided against Mudge. The examiner in chief decided in his favor. Their decision was reversed by the Commissioner & his decision was affirmed by the supreme court. By the final decision Green was awarded a patent, and whether his patent superseded Suggitt's patents the papers do not clearly show, but it was decided that Suggitt had a superior right to Mudge, & if Green had the superior right to Suggitt it removed Mudge so much farther from success. These decisions covered the whole invention claimed by Mudge, & the effect of them was to render his letters-patent invalid & utterly worthless, except that he still
105 had by statute the right to contest the matter by bill in equity, § 4915. So long as the final decision remained unreversed & unaffected by any proceedings authorized to be instituted in equity they were final & obligatory upon the parties, & for the purposes of this case the decision must be deemed res adjudicata between the parties.

It should be stated that evidence was given tending to show that subsequent to the final decision the attorney of Mudge had in his possession the original letters-patent granted to Mudge, from which it is claimed that the letters were returned within the meaning of the contract & that the defendant was liable.

These contracts were drawn by the parties themselves. They are inartificial & some of the expressions are ambiguous. They must be construed according to established rules with a view, if practicable, of carrying out the intent of the parties. The language must be given
106 its ordinary practical construction viewed in the light of sur-

rounding circumstances. It is quite manifest that the last contracts were made in consequence of the litigation involved by the interference proceedings and in contemplation of a possible adverse result. These proceedings are not mentioned, but they had been instituted, & the first contract recites that the patent might not be returned, of which fact the defendant was ignorant.

It would seem that the contract was made for the benefit of Peck, as the recital states that he desired to be released from his obligation to convey in case he was not able to fulfill such obligation. He knew at this time that the question was pending before a tribunal competent to decide it between Mudge, under whom he claimed, & two other persons as to which of them was entitled to priority of invention, & consequently to a patent, & we must presume that he contemplated the contingency of an adverse result in speaking of his desire to be released from
107 his obligations if he was unable to fulfill them. He would be unable to fulfill them if the decision was adverse, as much so as if Mudge never had a patent. He had agreed to sell & convey an interest in a patent-right in certain territory, & if the patent was invalidated he could not convey it. The agreement is to pay $1,500 when Peck notifies the defendant of his readiness to fulfill the contract by deeding to defendant his interest in the patent & any reissue which may be granted. The difficulty with the plaintiff's case upon this contract is that his intestate never has been ready to fulfill his contract, that is, to convey to the defendant three thirty-second parts of Mudge's patent right. Notice of readiness requires readiness, & the latter implies ability to fulfill. As the matter stood, when he sought to convey, Mudge had no patent-right & Peck had no interest that he
108 could convey. The condition of payment was that Peck could convey, the specified interest, & was willing to do it. Any other construction would not only be unreasonable & unjust, but would nullify the very terms of the instrument, & clearly its intent. It is evident also that Peck at that time had no expectation of payment by the defendant, unless he could convey to the defendant an interest in a valid patent-right, & it is evident also that he deemed it important to be relieved from his contract to convey an interest if the decision should be adverse to Mudge's patent.

The contract contained in the receipt of July 6th contains different language, but the conditions of payment in both contracts were doubtless intended to be the same. The contention of the plaintiff is based upon a technical construction of the words of the alternative, "or providing the old patent is returned." This language is ambiguous, & it is not so clear what the parties did as what they did not intend
109 by it. Taken literally it implies that there might be a return of the patent without a reissue, & such a contingency was possible by a withdrawal of the application for a reissue, & perhaps also by a decision that no reissue was necessary, & that the old specifications were sufficient, & possibly by a simple denial of the application for a reissue for any reason not affecting the validity of the original patent. Without undertaking to say precisely what was in the minds of the parties in using these words, it is manifest that the plaintiff's construction cannot be sustained. It would be unreasonable to suppose that the subsequent return of the old letters, after the patent had been declared void, was intended. The parties were dealing with matters of substance & not shadows or waste paper, & when they provided for a return of the old patent they meant a patent valid as such. Otherwise,
110 why the necessity of these contracts at all? If the defendant was

to pay, although the patent was declared void & valueless, why should Peck desire to be released from his obligations, and why should the consideration paid be returned to the defendant? The mere possession of the letters, after the patent had been declared void, was not the return contemplated. There is no evidence how the agent became possessed of the old letters. It does not appear that they were returned by the department all. They may have been loaned, or possibly returned upon request, to enable the plaintiff to bring his bill in equity. However this may be, the return of these old letters for any purpose after the adverse adjudication was not the return specified in the contract or contemplated by the parties.

The question was much discussed by counsel whether the surrender of a patent for the purpose of a reissue was a cancellation of the patent from the time of surrender, or only from the time of reissue.

111 In any view of this case I do not deem the point material. In the first place an application for reissue can only be made upon the ground that the patent is invalid & inoperative, § 4916, and the petition of Mudge for a reissue states that his original patent was invalid & inoperative for want of a sufficient specification. It is conceded, & the act of 1870 expressly declares, that cancellation takes place upon reissue. There was no reissue, but the adjudication which intervened was as fatal to the original patent as a reissue. The latter would have been a valid paent from that time, while the former destroyed the old & and all right to a new patent. It is not important for this case where the fatal blow came from, it is sufficient that it was effectual. It was suggested upon the argument that there was sufficient vitality in the letters patent to base a bill in equity upon, & that a return for that purpose might have

112 been contemplated by the parties. The answer to this is that the defendant purchased & agreed to pay for an interest in a patent right & not in a right to bring a lawsuit. It was this latter right only which remained after the adjudication, & there is not a word in the contracts or a circumstance in the case tending to show that a return for this purpose was what the defendant contracted for. The whole case shows that the return of the letters patent contemplated was such a return as would enable the vendors to fulfill their obligations under the original contracts, & that this could only happen by the return of a valid patent; this is substantially expressed in one of the last contracts & is fairly implied in both.

The judgment must be affirmed.

All concur.

A copy.

H. E. SICKLES, *Reporter*,
Per C.

(Indorsed:) Peck ag'st Collins. Opinion. Church, Ch. J. Laws Dig., p. 135, § 4. 3.25.

113 In the court of appeals.

REED PECK, AS ADMINISTRATOR OF THE ESTATE of George W. Peck, deceased, appellant,
ag'st
TRUMAN D. COLLINS, RESPONDENT.

It is hereby certified and made a part of the record and judgment of this court that the construction of the patent laws of the United States

touching the granting of patents, the surrender and reissue of patents, proceedings on interference of patents, and the effect of decisions in interference cases on interfering patents was drawn in question in this case, and that the decision of this court was and is against the existence and validity of a patent for "a new mode of sinking wells," granted by the United States to Byron Mudge, October 24th, 1865, in which patent the plaintiff had an interest, and set the same up and claimed under the same under said patent laws.

114 The plaintiff herein claimed to recover $3,500.00 and interest, under the contracts upon which he sues, upon the ground that he had proved the return of said patent, and that he had the interest in said patent, as required by said contracts, to entitle him to recover, and that he was entitled to such interest in said patent, and Mudge was entitled to the return of said patent upon the final rejection of Mudge's application for reissue, on the interference proceedings proved herein under the laws of the United States, and this court decides that the decisions in the interference proceedings adverse to the priority of Mudge's patent invalidated his patent and all interest therein, except the right to bring an action in equity under the United States statutes, and that the possession of the certificate or patent by the plaintiff's intestate after

115 such decision did not establish such a return of the patent-right as the contracts upon which the action was brought contemplated, as the said contracts required the return of Mudge's patent as an existing patent-right, and the adjudications invalidated the same.

S. E. CHURCH,
Ch. J. Court of Appeals.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, Sept. 20th, 1877.

I hereby certify that the above forms part of the record and judgment of this court in the above entitled action.

[SEAL.] F. S. PERRIN,
Deputy Clerk.

116 STATE OF NEW YORK:

In court of appeals.

REED PECK, AS ADMINISTRATOR OF THE ESTATE of George W. Peck, deceased, appellant,
ag'st
TRUMAN D. COLLINS, RESPONDENT.

To the honorable Sanford E. Church, chief justice of the said court of appeals:

The petition of Reed Peck, above named, respectfully shows that, as administrator of the estate of George W. Peck, deceased, he is plaintiff in the above-entitled cause; that judgment herein in this court against said plaintiff, affirming the judgment and order of the general term of the supreme court, from which the plaintiff appealed to this court, was rendered September 18th, 1877, and that the remittitur of this court is in the possession of M. M. Waters, attorney for defendant, as deponent has been informed and believes true, and has not been filed in

117 the supreme court.

Your petitioner further shows that by said judgment of this court, and also by the decissions of the supreme court in this cause, from which said plaintiff appealed, a patent-right for "a new mode of sinking

wells," granted by the United States to Byron Mudge, October 24th, 1865, was adjudged and declared to be void, and all interest therein; and that the plaintiff herein set the same up in this action and claimed to recover under the same, as an assignee of an undivided interest in said patent.

Your petitioner further shows, upon information and belief, that, by reason of said decissions against the validity of said patent and the plaintiff's interest therein, the plaintiff became entitled to prosecute a writ of error from the decission of this court to the Supreme Court of the United States, for the purpose of having the same reviewed by the said Supreme Court.

118 Your petitioner further shows that immediately upon the rendition of said judgment by this court, your petitioner instructed his attorney to obtain and prosecute such a writ from said decision at the earliest practicable moment, and that your petitioner desires such writ for no purpose of delay, but intends to bring this cause for review before the Supreme Court of the United States at the earliest possible time.

Wherefore your petitioner prays the allowance of a writ of error from the said decission of this court to the Supreme Court of the United States.

REED PECK.

BROOME COUNTY, *ss:*

Reed Peck, being duly sworn, says that he has heard read the foregoing petition, and that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

REED PECK.

Sworn to before me this 10th day of November, 1877.

H. S. MAURAL,
Notary Public.

(Indorsed:) In court of appeals. Reed Peck, as administrator, etc., ag'st Truman D. Collins. Petition for writ of error. A. D. Wales, att'y for pl'ff.

Presented and read Nov. 13th, 1877.

S. E. CHURCH.

119 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the court of appeals of the State of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals before you, or some of you, being the highest court of law or equity of the said State in which a decission could be had in the said suit between Reed Peck, as administrator of the estate of George W. Peck, deceased, as plaintiff and appellant, and Truman D. Collins, as defendant and respondent, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decission was against their validity, or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or com-

120 mission held under the United States, and the decission was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or commission,

a manifest error hath happened, to the great damage of the said Reed Peck, as plaintiff aforesaid, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and
121 there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, this 15th day of October, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] CHARLES MASON,
Clerk of the Circuit Court of the United for the Northern District of New York.

Allowed, this 13th day of November, 1877.

S. E. CHURCH,
Ch. J. Court of Appeals.

(Indorsed:) In court of appeals. Reed Peck, as administrator of the estate of George W. Peck, deceased, appellant, ag'st Truman D. Collins, respondent. Writ of error to U. S. Supreme Court.

122 Supreme Court of the United States.

REED PECK, AS ADMINISTRATOR OF THE ESTATE of George W. Peck, deceased, plaintiff in error,
ag'st
TRUMAN D. COLLINS, DEFENDANT IN ERROR.

UNITED STATES OF AMERICA,
Northern District of New York, ss:

Alexander D. Wales, being duly sworn, deposes and says that he did on the 13th of November, 1877, lodge a copy of the writ of error in this cause in the office of the clerk of the court of appeals of the State of New York, and also a copy of the bond given to obtain the citation on said writ of error for the said Truman D. Collins, defendant in error, in this suit; and further says not.

ALEXANDER D. WALES.

Subscribed and sworn to this 8th day of March, 1877.

CHARLES S. HALL,
U. S. Com. N. Dis. N. Y.

(Indorsed:) Reed Peck, as administrator, etc., ag'st Truman D. Collins. Affidavit of service of writ of error & bond.

123 Supreme Court of the United States.

REED PECK, AS ADMINISTRATOR OF THE ESTATE of George W. Peck, deceased, pl'ff in error,
ag'st
TRUMAN D. COLLINS, DEF'T IN ERROR.

UNITED STATES OF AMERICA,
Northern District of New York:

Alex. D. Wales, being duly sworn, deposes and says that he did, on the 1st day of March past, personally serve on M. M. Waters, of Courtland, New York, attorney for the above named Truman D. Collins, the annexed citation, by showing him the same, and at the same time delivering to him a true copy thereof, and further says not.

ALEX. D. WALES.

Subscribed and sworn to before me this 8th day of March, 1878.

CHARLES S. HALL,
U. S. Com. N. Dis. N. Y.

124 Supreme Court of the United States.

REED PECK, AS ADMINISTRATOR OF THE ESTATE of George W. Peck, deceased, pl'ff in error,
ag'st
TRUMAN D. COLLINS, DEF'T IN ERROR.

UNITED STATES OF AMERICA,
Western District of Pennsylvania:

R. L. Whitman, being duly sworn, deposes and says that he did, on the 24th day of December last past, personally serve on Truman D. Collins, the above named defendant in error, the annexed citation, by showing him the same, and at the same time delivering to him a true copy thereof, and further says not.

R. L. WHITTON.

Subscribed and sworn to before me this 25th day of Decem., 1877.

[SEAL.] E. L. DAVIS,
Notary Public.

125 UNITED STATES OF AMERICA, *ss:*

To Truman D. Collins, greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the court of appeals of the State of New York, wherein Reed Peck, as administrator of the estate of George W. Peck, is the plaintiff, and you are defendant in error, to show cause, if any there be, why the judgement in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 13th day of November, in the year of our Lord one thousand eight hundred and seventy-seven, and

S. E. CHURCH,
Ch. J. Court of Appeals.

(Indorsed:) United States Supreme Court. Reed Peck, as administrator of the estate of George W. Peck, deceased, ag'st Truman D. Collins. Citation.

126 Supreme Court of the United States.

REED PECK, AS ADMINISTRATOR OF THE ESTATE of George W. Peck, deceased, *ag'st* TRUMAN D. COLLINS. } In error.

Of October term, one thousand eight hundred and seventy-eight.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, comes the said Reed Peck, as administrator of the estate of George W. Peck, deceased, by Neri Pine, his attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit, that by the record aforesaid it appears that the judgment aforesaid given was given for the said Truman D. Collins against the said Reed Peck, as administrator of the estate of George W. Peck, deceased, whereas by the law of the
127 land the said judgment ought to have been given for the said Reed Peck, as administrator of the estate of George W. Peck, deceased, against the said Truman D. Collins; and more particularly in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the said George W. Peck, the original plaintiff in said cause, was non-suited on the trial of said cause by the Hon. Justice Boordman, before whom said cause was tried, on the ground that the surrender of the patent by the patentee, as proved in evidence operated as an extinguishment of said patent, whereas the said judge, by the law of the land, ought to have decided that said patent was not extinguished by the said surrender as proved in evidence, and ought not to have non-suited the said plaintiff; and by the law of the land manifestly erred in so deciding as aforesaid; and also more particularly in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it
128 appears that the court of appeals of the State of New York, by its judgment in said cause, decided against the existance and validity of a patent for "A new mode of sinking wells," granted by the United States to Byron Mudge, October 24th, 1865, in which patent the plaintiff had an interest, and set the same up, and claimed under the same under said patent laws, whereas by the law of the land the said court of appeals should not have decided against the existance and validity of said patent, and in so doing, according to the law of the land, erred.

Also in the record and proceedings aforesaid, there is manifest error in this, to wit, that by the record aforesaid, it appears that the said court of appeals by its judgment decides that the decisions in the interference proceedings adverse to the priority of Mudge's patent validated his patent and all interest therein, except the right to bring
129 an action in equity under the United States statutes, and that the possession of the certificate or patent by the plaintiff's intestate after such decision did not establish such a return of the patent right

as the contracts upon which the action was brought contemplated, as the said contracts required the return of Mudge's patent as an existing patent right, and the adjudications invalidated the same; whereas by the law of the land the said patent was not invalidated by said decisions or said interference proceedings nor any interest therein, and the said court of appeals in deciding that said patent was invalidated by said decisions as aforesaid, erred. And whereas the possession of the said certificate or patent by the plaintiff's intestate after such decission or interference did establish such return of the patent right as the contracts upon which the action was brought contemplated, as the contracts required the return of an existing patent, and the adjudi-
130 cation or interference did not invalidate the same, and the said court of appeals erred in deciding to the contrary; and whereas the court of appeals erred in deciding as aforesaid that the decisions in the interference proceedings adverse to the priority of Mudge's patent invalidated his patent and all interest therein except the right to bring an action in equity under the United States statutes.

And the said Reed Peck, as administrator of the estate of George W. Peck, deceased, prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of said judgment.

REED PECK,
As Administrator of the Estate of George W. Peck, deceased,
Plaintiff in Error.

NERI PINE,
Attorney and Solicitor for Plaintiff in Error.

Office, Phelps' Bank Building, Binghamton, N. Y.
Dated March 15th, 1878.

(Indorsed:) Supreme Court of the United States. Reed Peck as administrator, etc., ag'st Truman D. Collins. Assignment of errors and prayer for reversal. Neri Pine, attorney for pl'ff in error.

131 Supreme Court of the United States.

REED PECK, AS ADMINISTRATOR OF THE ESTATE of George W. Peck, deceased,
ag'st
TRUMAN D. COLLINS.

Know all men by these presents that we, Reed Peck, Jasper H. Partridge, & Samuel Corbin, of the town of Afton, county of Chenango, N. Y., are held and firmly bound unto Truman D. Collins, in the sum of $1,000.00 (one thousand dollars) to be paid to the said Truman D. Collins, his executors or administrators, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals and dated the twelfth day of November, 1877.

Whereas the above named Reed Peck, as administrator of the
132 estate of George W. Peck, deceased, hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the court of appeals of the State of New York:

Now, therefore, the condition of this obligation is such that if the above named Reed Peck, as administrator of the estate of George W.

Peck, deceased, shall prosecute his said writ of error to effect and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

REED PECK. [SEAL.]
JASPER H. PARTRIDGE. [SEAL.]
SAMUEL CORBIN. [SEAL.]

STATE OF NEW YORK,
County of Chenango, ss:

On this 12th day of November, A. D. 1877, before me, the subscriber, appeared Reed Peck, Jasper H. Partridge, & Samuel Corbin, to
133 me personally known to be the same persons described in and who executed the above undertaking, and severally acknowledged that they executed the same.

CHARLES HILL,
Justice of the Peace.

STATE OF NEW YORK,
County of Chenango, ss:

Jasper H. Partridge, being duly sworn, says that he resides in the town of Afton, county of Chenango, New York, and is a freeholder therein, and is worth in property not exempt from execution the sum of two thousand dollars, over and above all debts, demands, and liabilities of whatever sort which he owes or has incurred.

JASPER H. PARTRIDGE.

Subscribed and sworn to before me this 12th day of Nov., 1877.

CHAS. HILL,
Justice of the Peace.

134 STATE OF NEW YORK,
County of Chenango, ss:

Samuel Corbin, being duly sworn, says that he resides in the town of Afton, Chenango County, N. Y., and is a freeholder therein, and is worth in property not exempt from execution the sum of three thousand dollars over and above all debts, demands, and liabilities of whatsoever sort which he owes or has incurred.

SAMUEL CORBIN.

Subscribed and sworn to before me this 12th day of Nov., 1877.

CHARLES HILL,
Justice of the Peace.

I hereby certify that I am personally acquainted with Reed Peck, Jasper H. Partridge, & Samuel Corbin, and that I fully believe all their statements in this to be true.

CHARLES HILL,
Justice of the Peace.

I hereby approve of the above bond and of the sufficiency of the sureties thereto.
Dated Nov. 13th, 1877.

S. E. CHURCH,
Ch. J. Court of Appeals.

(Indorsed:) Reed Peck, as administrator of the estate of George W. Peck, deceased, ag'st Truman D. Collins. Copy. Bond on writ of error to U. S. Supreme Court. Filed Feb. 6th, '78.

135 Court of appeals.

STATE OF NEW YORK,
Clerk's Office:

PEED PECK, ADM'R, &C.. }
vs. }
TRUMAN D. COLLINS. }

I, Edwin O. Perrin, clerk of the court of appeals of the State of New York, do hereby certify that the papers hereto annexed are the original papers and the whole of said originals upon which this court acted in rendering judgment herein, also the original certificate as to judgment & nature of case, petition for writ of error, writ of error, affidavit of service of writ of error and bond, citation with proof of service, assignment of error and prayer for relief, copy bond on writ of error, the original of which is on file in my office, and duly certified copy of the opinion of this court rendered herein.

In witness whereof I have hereunto set my hand and affixed my official seal, at the city of Albany, this 22nd day of March, A. D. 1878.

[SEAL.] E. O. PERRIN, *Clerk.*

(Indorsement on cover:) No. 433. Reed Peck, administrator of George W. Peck, deceased, plaintiff in error, vs. Truman D. Collins. New York c't of appeals. Filed 20th June, 1878.

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